TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~549.~~ 92

EUGENE LASERE, PLAINTIFF IN ERROR,

vs.

EUGENE ROCHEREAU, ALBIN ROCHEREAU, WILLIAM T. HEPP, MRS. C. BULLITT, A. DOLPHINI, AND CUTHBERT BULLITT.

IN ERROR TO THE SUPREME COURT OF THE STATE OF LOUISIANA.

FILED DECEMBER 18, 1871.

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No. 549.

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IN ERROR TO THE SUPREME COURT OF THE STATE OF LOUISIANA.

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1 State of Louisiana, sixth district court of New Orleans.

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EUGENE LASERE *vs.* EUGENE ROCHEREAU ET AL. } No. 17254.

Petition.—Filed Nov'r 3rd, 1865.

To the honorable the judge of the 6th district court of New Orleans:

The petition of Eugene Lasere, of the city of New Orleans, with respect, represents:

That, in the course of the year 1863, proceedings were had against him, during his temporary absence from the State; which proceedings were conducted in the sixth district court of the city of New Orleans, under the title of Eugene Rochereau and Co. vs. Eugene Lassere, No. 10804 of the docket of said court.

2 That said proceedings were instituted against your petitioner, and carried on to final execution, by the appointment of a curator ad hoc, as if your petitioner were an absentee or a non-resident of the State, and that, under said execution, the following property, belonging to your petitioner, was sold at public auction, to wit:

A lot of ground, No. 11, of square bounded by Carondelet, St. Charles, Common, and Canal streets, of this city, said lot measuring 20 feet 3 inches and 6 lines on Common street, with a width of 15 feet in the rear, the depth being 87 feet on one side, and 85 feet on the other, together with all the buildings and improvements on said lot; the said property was adjudicated to Samuel Moore, for Eliza White, wife of Cuthbert Bullitt, all of these parties residing in the parish of Orleans, including the members of the firm of E. Rochereau and Co., to wit, Eugene Rochereau, Albin Rochereau, and William Th. Hepp.

Your petitioner further represents that all these proceedings, from their inception to the sale and adjudication of his property, as above mentioned, are null and void absolutely, for the following reasons, to wit:

1st. Because your petitioner was not a party to any of these proceedings either in point of fact or by legal intendment.

2nd. Because the appointment of a curator ad hoc, during his temporary absence when he was not an absentee, and when it was

3 well-known to the public, as well as to all the parties above mentioned, that your petitioner was not an absentee, was illegal and unauthorized.

3rd. Because the person who acted as sheriff of the parish of Orleans, J. E. Dunham, was not legally elected or appointed sheriff under the constitution and laws in existence at the time, nor acted under color of authority as such, since his appointment was made under military rule, overriding the very constitution and laws in question.

4th. Because the property, sold as above mentioned, was fully worth

the sum of eighteen thousand dollars, and was sacrificed for the sum of six thousand and fifty dollars.

Your petitioner further represents that, by the illegal and tortious acts of these parties, and by the detention of his property, and the consequent loss of rent, the said parties, to wit, Eugene Rochereau, Albin Rochereau, William Th. Hepp, Samuel Moore, and Eliza White, wife of Cuthbert Bullitt, are bound in solido, to your petitioner, in the sum of five thousand dollars.

Wherefore your petitioner prays that Eugene Rochereau, Albin Rochereau, W'm T. Hepp, Samuel Moore, Eliza White, wife of Cuthbert Bullitt, and Cuthbert Bullitt be cited to answer this petition, (the lastly-named party to assist his said wife;) that all the proceedings had in the case of E. Rochereau and Co. vs. Eugene Lassere, including the appointment of the curator ad hoc, the seizure and sale of your petitioner's property, as stated in the foregoing petiton, be declared
4 null and void absolutely; that your petitioner be decreed to be still the owner of the property in question; and that he recover the sum of five thousand dollars, with interest, in solido, of the said Eugene Rochereau, Albin Rochereau, William T. Hepp, Samuel Moore, and Eliza White, with costs to be taxed.

Prays for general relief, and as in duty bound, etc.

(Signed) ALBERT VOORHIES,
(Signed) M. VOORHIES,
Att'ys for Petitioner.

[50c. stamps, cancelled.]

Citation for Eugene Rochereau.

Sixth district court of New Orleans.

The State of Louisiana to Mr. EUGENE ROCHEREAU:

You are hereby summoned to comply with the demand contained in the petition, of which a copy accompanies this citation, or deliver your answer to the same in the office of the clerk of the fifth district court of New Orleans, in the city of New Orleans, in ten days after the service hereof.

Witness the Honorable Guy Duplantier, judge of the said court, the 9th day of November, in the year of our Lord 1865.

Eugene Lasere vs. Eugene Rochereau and Co. et als. No. 17254.

5 [L. S.] (Signed) L. E. LEHMAN, *Dep'y Clerk.*

Sheriff's return.—Filed November 10th, 1865.

Received, New Orleans, November 10th, 1865, and, on the same day, I served a copy of the within citation and accompanying petition on Eugene Rochereau, one of the defendants herein, through William T. Hepp, his lawful agent, whom I know to be such by interrogating him, said Eugene Rochereau being absent from this city and State, as I was credibly informed, in person. Returned same day.

Sheriff's fees, $1.00.

(Signed) B. ALBERT,
Dep'y Sheriff.

Citation for Albin Rochereau.

Sixth district court of New Orleans.

The State of Louisiana to Mr. ALBIN ROCHEREAU:

You are hereby summoned to comply with the demand contained in the petition, of which a copy accompanies this citation, or deliver your answer to the same in the office of the clerk of the sixth district court of New Orleans, in the city of New Orleans, in ten days after the service hereof.

Witness the Honorable Guy Duplantier, judge of said court, the 9th day of November, in the year of our Lord 1865.

6 Eugene Lasere vs. Eugene Rochereau and Co. et al. No. 17254.

[L. S.] (Signed) L. E. LEHMAN,
Dep'y Clerk.

Sheriff's return.—Filed November 13th, 1865.

Received, New Orleans, November 10th, 1865, and, on the same day, I served a copy of the within citation and accompanying petition on Albin Rochereau, one of the defendants herein, in person. Returned same day.

Sheriff's fees, $1.00.

(Signed) B. ALBERT,
Dep'y Sheriff.

Citation to William T. Hepp.

Sixth district court of New Orleans.

The State of Louisiana to Mr. WILLIAM T. HEPP:

You are hereby summoned to comply with the demand contained in the petition, of which a copy accompanies this citation, or deliver your answer to the same in the office of the clerk of the sixth district court of New Orleans, in the city of New Orleans, in ten days after the service hereof.

Witness the Honorable Guy Duplantier, judge of the said court, the 9th day of November, in the year of our Lord 1865.

7 Eugene Lasere vs. Eugene Rochereau and Co. et al., No 17254.

[L. S.] (Signed) L. E. LEHMAN, *Dep'y Clerk.*

Sheriff's return.—Filed November 13th, 1865.

Received, New Orleans, November 10th, 1865, and, on the same day, I served a copy of the within citation and accompanying petition on W'm T. Hepp, one of the defendants herein, in person.

Returned same day.

Sheriff's fees, $1.00

(Signed) B. ALBERT, *Dep'y Sheriff.*

Citation for Samuel Moore.

Sixth district court of New Orleans.

The State of Louisiana to Mr. SAMUEL MOORE:

You are hereby summoned to comply with the demand contained in the petition, of which a copy accompanies this citation, or deliver your

answer to the same in the office of the sixth district court of New Orleans, in the city of New Orleans, in ten days after the service hereof.

Witness the Honorable Guy Duplantier, judge of the said court,
8 the 9th day of November, in the year of our Lord 1865.

Eugene Lasere vs. Eugene Rochereau and Co. et al., No. 17254.

[L. S.] (Signed) L. E. LEHMAN, *Dep'y Clerk.*

Sheriff's return.—Filed 13th November, 1865.

Received, New Orleans 10th November, 1865, and, on the 11th day, of the same month and year, I served a copy of the within citation and accompanying petition on Samuel Moore, one of the defendants herein, in person.

Returned same day.

Sheriff's fees, $1.00

(Signed) B. ALBERT,
Dep'y Sheriff.

Citation for Mrs. C. Bullitt.

Sixth district court of New Orleans.

The State of Louisiana to Mrs. ELIZA WHITE, wife of Cuthbert Bullitt:

You are hereby summoned to comply with the demand contained in the petition, of which a copy accompanies this citation, or deliver your answer to the same in the office of the clerk of the sixth district court of New Orleans, in the city of New Orleans, in ten days after the service hereof.

9 Witness the Honorable Guy Duplantier, judge of the said court, the 9th day of November, in the year of our Lord 1865.

Eugene Lasere vs. Eugene Rochereau and Co. et al., No. 17254.

[L. S.] (Signed) L. E. LEHMAN, *Dep'y Clerk.*

Sheriff's return.—Filed 13th November, 1865.

Received, New Orleans November 10th, 1865, and, on the same day, I served a copy of the within citation and accompanying petition on Mrs. Cuthbert Bullitt, one of the defendants herein, in person.

Returned same day.

Sheriff's fees, $1.00.

(Signed) B. ALBERT, *Dep'y Sheriff.*

Citation for Cuthbert Bullitt.

Sixth district court of New Orleans.

The State of Louisiana, to Mr. CUTHBERT BULLITT:

You are hereby summoned to comply with the demand contained in the petition, of which a copy accompanies this citation, or deliver your answer to the same in the office of the clerk of the sixth district
10 court of New Orleans, in the city of New Orleans, in ten days after the service hereof.

Witness the Honorable Guy Duplantier, judge of the said court, the 9th day of November, in the year of our Lord 1865.

Eugene Lasere vs. Eugene Rochereau and Co. et al. No. 17254.

[L. S.] (Signed) L. E. LEHMAN, *Dep'y Clerk.*

Sheriff's return.—Filed 13th November, 1865.

Received, New Orleans November 10th, 1865, and, on the same day, I served a copy of the within citation and accompanying petition on Cuthbert Bullitt, esq're, one of the defendants herein, by leaving the same at his domicil, No. 135 St. Charles street, in the hands of Mrs. Bullitt, his wife, a free person, apparently above the age of 14 years, and whose name I learned by interrogating her, he, the said defendant, being absent at the time.

Returned same day.

Sheriff's fees, $1.00.

(Signed) B. ALBERT, *Dep'y Sheriff.*

Answer of E. Rochereau and Co.—Filed November 20th, 1865.

11 EUGENE LASERE *vs.* EUGENE ROCHEREAU AND CO. ET AL. } No. 17254.

To the honorable judge of the sixth district court of New Orleans:

Now come into court by counsel, the defendants Eugene Rochereau and Co., who, for answer, deny generally and especially all the facts and allegations in the plaintiff's petition contained, except what may hereinafter be specially admitted.

Respondents admit to have, as mortgage creditors, caused the property mentioned in plaintiff's petition, to be seized and sold by executory process, in the suit of Eugene Rochereau vs. Eugene Lasere, No. 10804 of the docket of this court, the record of which case is hereto annexed and made a part hereof, but they deny that there was any irregularity in any part of said proceedings.

They aver, on the contrary, to have acted throughout in pursuance of their just rights, and strictly according to law.

And, further answering, they say that, at the time said proceedings on executory process were had, said Eugene Lasere, the defendant therein, was absent from this State without having left any one in said State to take care of his estate and represent him; and that, under these
12 circumstances, the appointment of a curator ad hoc, to represent and defend him in said executory process, was the very course pointed out by law.

And, further answering, they say that James E. Dunham, acted throughout and carried on the aforementioned proceedings as sheriff of the parish of Orleans, under an order or appointment made by G. F. Shepley, brigadier general in the Army of the United States, and then military governor of the State of Louisiana, duly appointed as such by the major-general commanding the Department of the Gulf, who himself held his authority from the President of the United States.

Wherefore they pray for a judgment in their favor, and against the plaintiff, with costs, and also for general relief.

And (supposing an impossibility) should the sale be annulled, then, and not otherwise, they pray that said Eugene Lasere be condemned to pay them the sums specified in their petition for executory process, No. 10804, including principal, interests, charges, and costs as therein mentioned, with special mortgage on the property in said petition mentioned and fully described in the act of mortgage thereto annexed.

And they further pray for general and equitable relief.

(Signed) J. MAGNE,
Of Counsel.

13 *Answer of Samuel Moore.—Filed November 22nd, 1865.*

EUGENE LASERE
vs.
EUGENE ROCHEREAU AND CO. ET AL. } No. 17254.

Sixth district court, New Orleans.

To the honorable the sixth district court of New Orleans, State of Louisiana:

The answer of Samuel Moore, residing in the city of New Orleans, to the petition against him, filed in the above-entitled case, respectfully represents:

That he denies all and singular the allegations in said petition contained, with the exception only of what is hereinafter specially admitted.

And respondent, further answering, says: true it is, he bid at the said public sale, but that he bid in the name and as the agent of the said Mrs. Eliza White, wife of the said Cuthbert Bullitt, and that he has not now and never had, any interest or connection with the title or ownership or possession of the said property.

Wherefore respondent prays that plaintiff's claim may be rejected, and he hence dismissed with his costs.

Signed MILES TAYLOR,
Att'y for Respondent.

14 *Answer ana call in warranty of Mrs. Cuthbert Bullitt.—Filed November 20th, 1865.*

EUGENE LASERE
vs.
EUGENE ROCHEREAU AND CO., AND MRS. Cuthbert Bullitt and husband. } No. 17254.

Sixth district court, New Orleans.

To the honorable the sixth district court of New Orleans, State of Louisiana:

The answer of Mrs. Eliza White, wife of Cuthbert Bullitt, separated in property, and authorized and assisted by her said husband, Cuthbert Bullitt, residing in the city of New Orleans, who joins her in this suit, to the petition against her, filed in the above-entitled case, respectfully represents:

That she denies all and singular the allegations in said petition contained, with the exception only of what may be hereinafter specially admitted.

And your respondents, further answering, say that the said Eliza White, wife of Cuthbert Bullitt, as aforesaid, became possessed of the property described in plaintiff's petition by and in virtue of an adjudication made to the said Samuel Moore, a bidder for her and in her
15 name, at a public sale for cash, made on or about the 11th day of January, 1864, by James E. Dunham, then acting in the capacity of the sheriff of the parish and city of New Orleans, under the authority of an order or appointment made by George F. Shepley, brigadier general in the Army of the United States, and then military governor of of Louisiana, duly appointed by the major general commanding the

Department of the Gulf, and in virtue of two orders of seizure and sale issued out of this honorable court upon executory process, granted according to law, in two suits entitled respectively.

Eugène Rochereau and Co. vs. Eugène Lasère, No. 10804, of the docket of the court, and Antoine Dolfini vs. Eugène Lasère, No. 10809 of the docket of the court.

That the said adjudication was made for and in consideration of the sum and price of six thousand and fifty dollars, ($6,050.00,) paid to the said sheriff, being more than two-thirds of the appraisement made of the said property according to law, previous to said public sale.

That the said Eugène Lasère, the defendant in said orders of seizure and sale, was then actually absent from the city of New Orleans, and State of Louisiana, without having appointed any one to take care of his estate, and was not represented in the State.

That, in consequence of the said absence of the said Eugène Lasère, and his not being represented therein, John Culbertson, esq're, an
16 attorney at law, was duly appointed curator ad hoc in the said suits, Nos. 10804 and 10809, to represent the said Eugène Lasère, and, contradictorily with whom, the proceedings under the said orders of seizure and sale were carried on; and that, in the premises, the said adjudication was made according to law, and had the effect of transferring all the right, title, and interest of the said Eugène Lasère in and to the said property to the said respondent, Eliza White, wife of Cuthbert Bullitt as aforesaid, who is now, respondents aver, the only true and legal owner and possessor of the same.

Wherefore respondents pray that petitioner's demand may be dismissed, and that they may be hence dismissed with their costs.

And your respondents further represent that the said plaintiff, in the said orders of seizure and sale, under and in virtue of which the said adjudication was made to the said Mrs. Eliza White, wife of Cuthbert Bullitt, as aforesaid, in the event of the eviction of Mrs. Eliza White, wife of Cuthbert Bullitt, from the said property, are bound and liable to her in warranty; that, at the time of the adjudication of the said property, the value of the property was greatly depreciated by the public troubles of the war, and that now, in consequence of the return of peace, the value of the same has been greatly enhanced and augmented.

That, in their said capacity of warrantors, the said Eugène Rochereau and Co., composed of Eugène Rochereau, Albin Rochereau, and William T. Hepp, and the said Antoine Dolfini, are liable
17 and bound in solido to reimburse to respondents.

First. The price paid by her for the said property, amounting to the sum of six thousand and fifty dollars, ($6,050.00.)

Second. The damages which she, the said Mrs. Eliza White, wife of Cuthbert Bullitt, has suffered from the said eviction in consequence of the said increase of the value of the said property, which respondents aver to amount to the sum of eighteen thousand dollars; and

Third. All the costs of the action in warranty and of the suit of the original plaintiff.

Your respondents further represent that they are entitled to a delay in order to have the said warrantors made parties to this suit.

Wherefore respondents pray that the said partnership of Eugène Rochereau and Co., composed of the said Eugène Rochereau, Albin Rochereau, and William T. Hepp, and the said Anto. Dolfini, may be cited in warranty before this honorable court, and that after legal proceedings, and in the event there should be a judgment evicting the said

Mrs. Eliza White, wife of Cuthbert Bullitt, as aforesaid, from the said property, they, the said Eugène Rochereau and Co., and the said Antonie Dolfini, shall be condemned in solido, in their capacity of warrantors, to pay to the said Mrs. Eliza White, wife of Cuthbert Bullitt, the sum of fourteen thousand and fifty dollars, ($14,050.00,) with legal interest thereon, and the costs of this action in warranty, and of
18 the suit of the original plaintiff.

And respondents further pray for all and general relief.

(Signed) MILES TAYLOR,
Attorney for Respondents.

Acceptance of service.

NEW ORLEANS, *November 20th*, 1865.

Service accepted.

(Signed) J. MAGNE,
Att'y for E. Rochereau and Co.

Answer of Eugene Rochereau and Co. to call in warranty.—Filed December 2nd, 1865.

EUGÈNE LASÈRE
vs.
EUGÈNE ROCHEREAU AND CO. ET AL. } No. 17254.

To the honorable the judge of the sixth district court of New Orleans:

In answer to the pretended call in warranty of Mrs. Eliza White, the wife of Cuthbert Bullitt,, the defendants, Eugène Rochereau and Co., deny all the facts and allegations therein contained.

And, further answering, they now specially deny to be in any way liable in warranty towards her, said Mrs. Cuthbert Bullitt, nor
19 towards any other person for any sum or amount whatsoever.

And even, supposing an impossibility, should they be liable in warranty for the price paid by said Mrs. Bullitt, which they deny, she could not have a judgment herein against respondents, inasmuch as she has not made the proper parties to her pretended action in warranty, viz:

Eugene Lasere, the defendant in the executory process, who would be the first debtor in warranty.

Wherefore they pray that the so-called action in warranty of said Mrs. Cuthbert Bullitt, be dismissed with costs, and they also pray for general and equitable relief.

(Signed) J. MAGNE, *of Counsel.*

Application to amend petition and for trial by jury.—Filed 16th February, 1866.

EUGÈNE LASÈRE
vs.
EUGÈNE ROCHEREAU AND CO. ET AL. } No. 17254.

Sixth district court.

In this case the plaintiff respectfully prays to be allowed to amend his petition, and that he be allowed to have this cause tried be-

20 fore a jury, as it involves a very important question of damages.
Respectfully submitted.
(Signed) A. AND M. VOORHIES.
For Plaintiff.

Order allowing plaintiff to amend petition and a trial by jury.—16th February, 1866.

EUGÈNE LASÈRE
vs
EUGÈNE ROCHEREAU AND CO. ET AL. } No. 17254.

Upon the application of plaintiff this day filed, it is ordered that he have leave to amend his petition herein, and that this cause be tried before a jury.

EUGÈNE LASÈRE
vs.
A. DOLPHINI ET AL. } No. 17255.

Petition.—Filed November 3rd, 1865.

To the honorable judge of the sixth district court of the city of New Orleans:

21 The petition of Eugène Lasère, of the city of New Orleans, with respect, represents:

That, in the course of the year eighteen hundred and sixty-three, during the temporary absence of your petitioner from the State, proceedings were instituted against him, in the 6th district court of the parish of Orleans, under the title of A. Dolphini vs. Eugène Lassère, No. 10809 of the docket thereof; that a curator ad hoc was appointed to represent your petitioner, as if he had been a non-resident or an absentee, and writs of seizure and sale issued, as if in due course of law, culminating in the sale at public auction of the following property of your petitioner, to wit:

Lot No. 11, of square bounded by Carondelet, Common, St. Charles, and Canal streets, measuring 20 feet 3 inches 6 lines, on Common street with a width of fifteen (15) feet in the rear, the depth being 87 feet on one side and 82 feet on the other, together with all the buildings and improvements thereon; that the said property was adjudicated at the sum of six thousand and fifty dollars, to Samuel Moore, for Eliza White, wife of Cuthbert Bullitt; that in all the foregoing proceedings, the said A. Dolphini, who is a non-resident, has been represented by his agent, the firm of E. Rochereau and Co., of the city of New Orleans, which firm is composed of the following members, to wit: Eugéne Rochereau, Albin Rochereau, and William T. Hepp.

Your petitioner further represents that all these proceedings,
22 from their inception to the sale and adjudication of his property as above-mentioned, are absolutely null and void for the following reasons, to wit:

1st. Because your petitioner was not a party to any of these proceedings, whether in point of fact or by legal intendment.

2nd. Because the appointment of a curator ad hoc, to represent him during his temporary absence, when he was not an absentee, and when these parties, as well as the public generally, were fully aware that he

was neither an absentee nor a non-resident, was wholly unauthorized, and can find no sanction in law.

3rd. Because James E. Dunham, who acted as sheriff in the premises, had been neither appointed nor elected sheriff of the parish, in pursuance of the constitution and laws of the State, nor did he act under color of authority, since his appointment was made under military rule, overriding these very constitution and laws.

4th. Because the property sold as above-mentioned, was fully worth the sum of eighteen thousand dollars, and was sacrificed for the sum of six thousand and fifty dollars.

Your petitioner further represents that, by the illegal and tortious acts of these parties, and by the detention of his property, and consequent loss of rent, your petitioner has suffered damages in the sum of five thousand dollars at the hands of these parties, who are consequently all liable for this amount in solido.

23 Wherefore your petitioner prays that the firm of Eugène Rochereau and Co., as agent of A. Dolphini, a non-resident, Samuel Moore, and Eliza White, wife of Cuthbert Bullitt, be cited to answer this petition; that Cuthbert Bullitt be cited to appear and assist his said wife in her defence; and that upon final hearing of this cause your petitioner do obtain judgment against A. Dolphini, Samuel Moore, and Eliza White.

1st. Declaring null and void absolutely all the proceedings had in suit entitled A. Dolphini vs. Eugene Lassére, No. 10809 of the docket of this court, and more especially the appointment of the curator ad hoc, the judgment rendered in the cause, and all the sheriff's proceedings ending in the sale and adjudication of petitioner's property.

2nd. Decreeing that your petitioner is still the lawful owner of the property in question, and

3rdly. Adjudging that your petitioner do have judgment in solido, against the said A. Dolphini, Samuel Moore, and Eliza White, wife of Cuthbert Bullitt, for the sum of five thousand dollars, with interest from judicial demand, and costs to be taxed.

Prays for general relief, and as in duty bound, etc.

(Signed) ALBERT VOORHIES.
(") M. VOORHIES,
Atty's for Petitioners.

Citation for A. Dolphini, thro' his agent, Rochereau and Co.

24 Sixth district court of New Orleans.

The State of Louisiana to Mr. ANTOINE DOLPHINI, through his agent Eugène Rochereau and Co.

You are hereby summoned to comply with the demand contained in the petition, of which a copy accompanies this citation, or deliver your answer to the same in the office of the clerk of the sixth district court of New Orleans, in the city of New Orleans, in ten days after the service hereof.

Witness the Honorable Guy Duplantier, judge of the said court, the 13th day of November, in the year of our Lord 1865.

Eugène Lasére vs. Antoine Dolphine et al., No. 17255.

[L. S.] (Signed) L. E. LEHMAN, *Dep'y Clerk.*

Sheriff's return.—Filed 15th November, 1865.

Received, New Orleans, November 13th, 1865, and, on this 14th of the same month and year, served copy of the within citation and accompanying petition on A. Dolphini, through Hepp, esq're, of the commercial firm of E. Rochereau and Co., agents for the defendant herein.

Returned same day.

Sheriff's fees, $1.00

25 (Signed) G. TOURNADE, *Dep'y Sheriff.*

Citation for E. Rochereau and Co.

Sixth district court of New Orleans.

The State of Louisiana to Messrs. E. ROCHEREAU AND CO., agent of Antoine Dolphini:

You are hereby summoned to comply with the demand contained in the petition, of which a copy accompanies this citation, or deliver your answer to the same in the office of the clerk of the sixth district court of New Orleans, in the city of New Orleans, in ten days after the service hereof.

Witness the Honorable Guy Duplantier, judge of the said court, the 13th day of November, in the year of our Lord 1865.

Eugène Lasère vs. Antoine Dolphini et al., No. 17255.

[L. S.] (Signed) L. E. LEHMAN,
Dep'y Clerk.

Sheriff's return.—Filed 15th November, 1865.

Received, New Orleans, November 13th, 1865, and, on the 14th of the same month and year, served copy of the within citation and accompanying personally on Hepp, esq're, of the commercial firm of
26 Eugène Rochereau and Co., agents for Antoine Dolphini, defendant herein.

Returned same day.

Sheriff's fees, $1.00.

(Signed) G. TOURNADE,
Dep'y Sheriff.

Citation for Samuel Moore.

Sixth district court of New Orleans.

The State of Louisiana to Mr. SAMUEL MOORE:

You are hereby summoned to comply with the demand contained in the petition, of which a copy accompanies this citation, or deliver the answer to the same in the office of the clerk of the sixth district court of New Orleans, in the city of New Orleans, in ten days after the service hereof.

Witness the Honorable Guy Duplantier, judge of the said court, the 13th day of November, in the year of our Lord 1865.

Eugène Lasère vs. Antoine Dolphini et als., No. 17255.

[L. S.] (Signed) L. E. LEHMAN,
Dep'y Clerk.

Sheriff's return.—Filed November 13th, 1865.

27 Received, New Orleans, November 13th, 1865, and, on the 16th of the same month and year, served copy of the within citation and accompanying petition, personally, on Samuel Moore, defendant herein.

Returned same day.

Sheriff's fees, $1.00.

(Signed) G. TOURNADE,
Dep'y Sheriff.

Citation for Mrs. Cuthbert Bullitt.

Sixth district court of New Orleans.

The State of Louisiana to Mrs. ELIZA WHITE, wife of Cuthbert Bullitt:

You are hereby summoned to comply with the demand contained in the petition, of which a copy accompanies this citation, or deliver your answer to the same in the office of the clerk of the sixth district court of New Orleans, in the city of New Orleans, in ten days after the service hereof.

Witness the Honorable Guy Duplantier, judge of the said court, the 13th day of November, in the year of our Lord 1865.

Eugène Lassère vs. Antoine Dolphini et als., No. 17255.

28 [L. S.] (Signed) L. E. LEHMAN,
Dep'y Clerk.

Sheriff's return.—Filed 17th November, 1865.

Received, New Orleans, November 13th, 1865, and, on the 16th of the same month and year served copy of the within citation and accompanying petition, personally, on Mrs. Eliza White, wife of Cuthbert Bullitt.

Returned same day.

Sheriff's fees, $1.00.

(Signed) G. TOURNADE,
Dep'y Sheriff.

Citation for Cuthbert Bullitt.

Sixth district court of New Orleans.

The State of Louisiana to Mr. CUTHBERT BULLITT:

You are hereby summoned to comply with the demand contained in the petition of which a copy accompanies this citation, or deliver your answer to the same in the office of the clerk of the sixth district court of New Orleans, in the city of New Orleans, in ten days after the service hereof.

Witness the Honorable Guy Duplantier, judge of the said court, the 13th day of November, 1865, in the year of our Lord.

29 Eugène Lassère vs. Antoine Dolphini et al., No. 17255.

[L. S.] (Signed) L. E. LEHMANN,
Dep'y Clerk.

Sheriff's return.—Filed 17th November, 1865.

Received, New Orleans, November 13th, 1865, and, on the 16th of the same month and year, served copy of the within citation and accompanying petition, personally, on Cuthbert Bullitt, defendant herein.
Returned same day.
Sheriff's fees, $1.00.
(Signed G. TOURNADE,
Dep'y Sheriff.

Answer of Antoine Dolphini.—Filed 20th November, 1865.

EUGÈNE LASÈRE
vs.
ANTOINE DOLPHINI ET ALS. } No. 17255.

To the honorable judge of the sixth district court of New Orleans:

Now comes into court, by counsel, the defendant, Antoine
30 Dolphini, who, for answer, deny generally and especially all the facts and allegations in the plaintiff's petition contained, except what may hereinafter be specially admitted.

Respondant avers to have, as mortgage creditor, caused the property mentioned in the plaintiff's petition to be seized and sold by executory process, in the suit of Antoine Dolphini vs. Eugène Lasère, No. 10809 of the docket of this court, the record of which case is hereto annexed, and made a part hereof; but he denies that there was any irregularity in any part of said proceedings. He avers, on the contrary, to have acted throughout in pursuance of his just rights and strictly according to law.

And, further answering, he says that, at the time said proceedings on executory process were had, said Eugène Lasère, the defendant therein, was absent from the State and city, without having left in said State and city any one to take care of his estate and represent him; and that, under these circumstances, the appointment of a curator ad hoc, to represent him and defend him in said executory process, was the very course pointed out by law.

And, further answering, he says that James E. Dunham acted throughout and carried on the aforementioned proceedings as sheriff of the parish of Orleans, under an order or appointment made by G. F. Shepley, brigadier general in the Army of the United States, and then military governor of the State of Louisiana, duly appointed by the major general commanding the Department of the Gulf, who himself
31 held his authority from the President of the United States.

Wherefore he prays for a judgment in his favor, and against the plaintiff with costs; and also for general relief. And, (supposing an impossibility,) should the sale be annulled, then, and not otherwise, he prays that said Eugène Lasère be condemned to pay him the sum specified in his petition for executory process, No. 10809, including principal, interests, charges, and costs, as therein set forth, with special mortgage on the property in said petition mentioned and fully described in the act of mortgage thereto annexed; and they further pray for general and equitable relief.

(Signed) J. MAGNE,
Of Counsel.

Answer of Samuel Moore.—November 22nd, 1865.

EUGÈNE LASÈRE
vs.
EUGÈNE ROCHEREAU AND CO. ET ALS. } No. 17255.

Sixth district court, New Orleans.

To the honorable the sixth district court of New Orleans, State of Louisiana:

The answer of Samuel Moore, residing in the city of New Orleans, to the petition against him filed in the above-entitled case,
32 respectfully represents:

That he denies all and singular the allegations in said petition contained, with the exception only of what is hereinafter specially admitted.

And respondent, further answering, says: true it is, he bid at the said public sale, but that he bid in the name and as the agent of the said Mrs. Eliza White, wife of the said Cuthbert Bullitt, and that he has not now, and never had, any interest or connection with the title or ownership or possession of the said property.

Wherefore respondent prays that plaintiff's claim be rejected, and he hence dismissed with his costs.

(Signed) MILES TAYLOR,
Attorney for Respondent.

Answer and call in warranty of Mrs. Cuthbert Bullitt.—Filed 22nd November, 1865.

EUGÈNE LASÈRE
vs.
ANTOINE DOLPHINI ET ALS. } No. 17255.

Sixth district court, New Orleans.

To the honorable the sixth district court of New Orleans, State of Louisiana:

33 The answer of Mrs. Eliza White, wife of Cuthbert Bullitt, separate in property, and authorized and assisted by her said husband, Cuthbert Bullitt, residing in the city of New Orleans, who joins her in this suit to the petition against her filed in the above-entitled case, respectfully represents:

That she denies all and singular the allegations in said petition contained, with the exception only of what may be hereinafter specially admitted.

And your respondent, further answering, says: That the said Eliza White, wife of Cuthbert Bullitt, as aforesaid, became possessed of the property described in plaintiff's petition by and in virtue of an adjudication made to the said Samuel Moore, a bidder for her and in her name, at a public sale, for cash, made on or about the 11th day of January, 1864, by James E. Dunham, then acting in the capacity of sheriff of the parish and city of New Orleans, under the authority of an order or appointment made by George F. Shipley, brigadier general in the Army of the United States, and then military governor of Louisiana, duly appointed by the major general commanding the Department of the Gulf and in virtue of two orders of seizure and sale issued out of this honora-

ble court upon executory process, granted according to law, in two suits, entitled respectively, Eugène Rochereau and Co. vs. Eugène Lasère, No. 10804 of the docket of the court, and Anto. Dolphini
34 vs. Eugène Lasère, No. 10809 of the docket of the court; that the said adjudication was made for and in consideration of the sum and price of six thousand and fifty dollars, ($6,050,00,) paid to the said sheriff, being more than two-thirds of the appraisem't made of the said property, according to law, previous to the said public sale; that the said Eugène Lasère, the defendant in the said orders of seizure and sale, was then actually absent from the city of New Orleans, and State of Louisiana, without having appointed any one to take care of his estate, and was not represented in the State; that, in consequence of the said absence of the said Eugène Lasère, and he not being represented therein, John Culbertson, esq're, an attorney at law, was duly appointed curator ad hoc in the said suits, Nos. 10804 and 10809, to represent the said Eugène Lasère, and, contradictorily with whom the proceedings under the said orders of seizures and sale were carried on.

And that in the premises the said adjudication was made according to law, and had the effect of transferring all the right, title, and interest of the said Eugène Lasère in and to the said property to the said respondant Eliza White, wife of Cuthbert Bullitt, as aforesaid, who is now, respondent avers, the only true and legal owner and possessor of the same.

Wherefore respondents pray that petitioner's demand may be dismissed, and that they may be hence dismissed with their costs.

35 And your respondents further represents that the said plaintiff in the said orders of seizure and sale under and by virtue of which the said adjudication was made to the said Mrs. Eliza White, wife of Cuthbert Bullitt, as aforesaid, in the event of the eviction of the said Mrs. Eliza White, wife of Cuthbert Bullitt, from the said property, are bound and liable in warranty; that, at the time of the adjudication of the said property, the value of the property was greatly depreciated by the public troubles and the war, and that now, in consequence of the return of peace, the value of the same has been greatly enhanced and augmented.

That, in their said capacity of warrantors, the said Eugène Rochereau and Co., composed of the said Eugène Rochereau, Albin Rochereau, and William T. Hepp, and the said Antoine Dolfini, are liable and bound in solido, to reimburse to respondents—first, the price paid by her for the said property, amounting to the sum of six thousand and fifty dollars, ($6,050.00;) second, the damages which the said Mrs. Eliza White, wife of Cuthbert Bullitt, has suffered from the said eviction, in consequence of the said increase in the value of the said property which respondents aver to amount to the sum of eight thousand dollars; and, third, all the costs of the action in warranty and of the suit of the original plaintiff.

Your respondents further represent, that they are entitled to delay, in order to have the said warrantors made parties to this suit.

36 Wherefore respondents pray that the said partnership of Eugène Rochereau and Co., composed of the said Eugène Rochereau, Albin Rochereau, and William T. Hepp, and the said Antoine Dolphini, may be cited in warranty before this honorable court; and that, after legal proceedings, and in the event there should be a judgment evicting the said Mrs. Eliza White, wife of Cuthbert Bullitt, as aforesaid, from the said property, they, the said Eugène Rochereau and Co. and the said Antoine Dolphini shall be condemned in solido, in their capacity of

warrantors, to pay to the said Eliza White, wife of Cuthbert Bullitt, the sum of fourteen thousand and fifty dollars, ($14,050.00,) with legal interest thereon, and the costs of this action in warranty, and of the suit of the original plaintiff.

And respondents further pray for all and general relief.

(Signed) MILES TAYLOR,
Attorney for Respondents.

Service accepted.
New Orleans, November 23rd.
(Signed) J. MAGNE,
Attorney for Dolphini.

Answer of Antoine Dolphini to call in warranty.—Filed December 2nd, 1865.

EUGÈNE LASÈRE
vs.
ANTOINE DOLPHINI ET ALS. } No. 17255.

37 To the honorable judge of the sixth district court of New Orleans:

For answer to the pretended call in warranty of Mrs. Eliza White, the wife of Cuthbert Bullitt, the defendant, Antoine Dolfini, denies all the facts and allegations therein contained.

And, further answering, he more especially denies to be in any way liable in warranty towards her, said Mrs. Cuthbert Bullitt, nor towards any other person for any sum or amount whatsoever.

And even (supposing an impossibility) should he be liable in warranty for the purchase-price paid by said Mrs. Bullitt, which he denies, she could not have judgment against this respondent, inasmuch as she has failed to make the proper parties to her action in warranty, viz:

Eugène Lasère, the defendant in the executory process, who should be the first debtor in warranty.

Wherefore he prays that the so-called call in warranty of said Mrs. Cuthbert Bullitt be dismissed with costs; and he further prays for general and equitable relief.

(Signed) J. MAGNE,
Of Counsel.

38 *Application of plaintiff to amend and for trial by jury.—Filed 16th February, 1866.*

EUGÈNE LASÈRE
vs.
ANTOINE DOLPHINI. } No. 17255.

Sixth district court.

In this case the plaintiff respectfully moves to amend his petition by praying that this cause be tried before a jury, as the same involves a very important question of damages.

(Signed) A. AND M. VOORHIES,
For Plaintiff.

Order allowing plaintiff to amend and a trial before a jury.—16*th February*, 1866.

EUGÈNE LASÈRE
vs.
ANTOINE DOLPHINI ET ALS. } No. 17255.

Upon the application of plaintiff this day filed, it is ordered that he have leave to amend his petition herein, and that this cause be tried before a jury.

Order for a subpœna duces tecum.—11*th January.*

39 EUGÈNE LASÈRE
vs.
EUGÈNE ROCHEREAU AND CO. ET AL. } No. 17254.

EUGÈNE LASÈRE
vs.
ANTOINE DOLPHINI ET AL. } No. 17255.

On motion of J. Magne, of counsel for defendants E. Rochereau and Co. and Antoine Dolphini, and on suggesting that the commission under which James E. Dunham acted as sheriff of the parish of Orleans in the years 1862 and 1863, etc., is material and necessary for the trial of the above-entitled cases, it is ordered by the court that said James E. Dunham, sheriff, do bring into court at the trial of said cases on Friday, the 12th of January, 1866, at 12 o'clock m., his commission of sheriff of the parish of Orleans.

Subpœna duces tecum.

State of Louisiana, sixth district court of New Orleans.

The State of Louisiana to James E. Dunham, greeting:

You are hereby commanded, in the name of the State of Louisiana and of the sixth district court of New Orleans, to be and appear, and to bring with you your commission as sheriff of the parish of
40 Orleans, for the years 1862 and 1863, before our sixth district court of New Orleans, on Friday, the 12th day of January, 1866, at 11 o'clock a. m., then and there to be used and read in evidence in a certain cause now pending therein between Eugène Lasère and Eugène Rochereau et als., and herein fail not under the penalty of two hundred and fifty dollars.

Witness the Honorable Guy Duplantier, judge of said court, at the city of New Orleans, this 11th day of January, 1866, and in the 90th year of the Independence of the United States.

[L. S.] (Signed) E. H. LEHMANN,
Dep'y Clerk.

Sheriff's return.—*Filed* 12*th January*, 1866.

Received, January 11th, 1866, and on the same day, same month, and year, served copy of the within subpœna duces tecum on James E. Dunham by leaving the same at his domicil on Canal street, between Carondelet and Baronne, in the hands of Gustavus Salbador, a free per-

son, apparently above the age of 14 years, living and residing at the said domicil, and whose name and other facts connected with this service I learned by interrogating him, said James E. Dunham being absent from home at the time of this service.

Returned same day.

Sheriff's fees, $0.50c.

(Signed) G. TOURNADE,
Dep'y Sheriff.

41 *Order for subpœna duces tecum.—31st January*, 1866.

EUGÈNE LASÈRE
vs.
EUGÈNE ROCHEREAU AND CO. ET AL. } No. 17254.

EUGÈNE LASÈRE
vs.
ANTOINE DOLPHINI ET AL. } No. 17255.

On motion of J. Magne, of counsel for defendants Eugène Rochereau and Co. and Antoine Dolphini, and on suggesting that the commission under which James E. Dunham acted as sheriff of the parish of Orleans, in the years 1862 and 1863, etc., is material evidence in the above-entitled cases, and necessary for the trial of said cases in order to protect the defendants' interest:

It is ordered by the court that said James E. Dunham, late sheriff of the parish of Orleans, do bring into court at the trial of the above-entitled cases on Friday, the 2nd of Feb'uary, 1866, at 11 o'clock a. m., his commission as sheriff of the parish of Orleans.

Subpœna duces tecum.

State of Louisiana, sixth district court of New Orleans.

42 The State of Louisiana to James E. Dunham, greeting:

You are hereby commanded, in the name of the State of Louisiana and of the sixth district court of New Orleans, to be and appear, and to bring with you your commission as sheriff of the parish of Orleans for the years 1862 and 1863, before our sixth district court of New Orleans, on Friday, the second day of February, 1866, at 11 o'clock a. m., then and there to be used and read in evidence in a certain cause now pending therein between Eugène Lasère and Eugène Rochereau et als.; and herein fail not under the penalty of two hundred and fifty dollars.

Witness the Honorable Guy Duplantier, judge of the said court, at the city of New Orleans, this 31st day of January, 1866, and in the 90th year of the Independence of the United States.

]L. S.] (Signed) LOUIS J. LEFEBVRE,
Dep'y Clerk.

Sheriff's return.—Filed 3rd February, 1866.

Received, January 31st, 1866. Served copy of the within copy of notice of subpœna and duces tecum on James E. Dunham, at his place of residence, Canal street, between St. Charles and Carondelet, by leaving the same into the hands of John Strena, a free person, apparently over

the age of 14 years, living and residing at the said domicil, and
43 whose name and other facts connected with this service I learned by interrogating him, the said James E. Dunham being absent from home at the time of said service.

Sheriff's fees $1.00.

(Signed) JOHN HECTOR,
Dep'y Sheriff.

Order for subpœna duces tecum.—14th February, 1866.

EUGÈNE LASÈRE
vs.
EUGÈNE ROCHEREAU AND CO. ET AL. } No. 17254.

EUGENE LASÈRE
vs.
ANTOINE DOLPHINI ET AL. } No. 17255.

On motion of J. Magne, of counsel for Eugene Rochereau and Co. and Antoine Dolphini, defendants herein, and on suggesting that the commission under which James E. Dunham acted as sheriff of the parish of Orleans, in the years 1862 and 1863, etc., is material evidence and necessary for the trial of the above entitled cases:

It is ordered by the court, that said James E. Dunham, late sheriff, do bring into court on Friday, the 16th February, 1866, at 11 o'clock a. m., his commission of sheriff of the parish of Orleans above described.

44 *Subpœna duces tecum.*

State of Louisiana, sixth district court of New Orleans.

The State of Louisiana to JAMES E. DUNHAM, greeting:

You are hereby commanded, in the name of the State of Louisiana, and of the sixth district court of New Orleans, to be and appear, and to bring with you your commission as sheriff of the parish of Orleans, for the years 1862 and 1863, before our sixth district court of New Orleans, on Friday, the 16th day of February, 1866, at 11 o'clock a. m., then and there to be used and read in evidence in a certain cause now pending therein, between Eugene Lasère and Antoine Dolphini and Eugene Rochereau; and herein fail not under the penalty of two hundred and fifty dollars.

Witness the Honorable Guy Duplantier, judge of said court, at the city of New Orleans, this 14th day of February, 1866, and in the 90th year of the Independence of the United States.

[L. S.] (Sighed) E. H. LEHMANN,
Dep'y Clerk

Sheriff's return.—Filed 16th February, 1866.

Received, February 14th, 1866, and, on the 15th day of February, 1866, served copy of the within copy of subpœna duces tecum on James E.
45 Dunham, by leaving the same into the hands of E. S. Weseberger, who accepted service as agent, as I am informed that the said James E. Dunham was not in the house of the Maison Dorée, and was not expected home soon—before night. They said at the Maison Dorée that the said Dunham would not likely be home before night.

Sheriff's fees, $0.50c.

(Signed) JOHN HECTOR,
Dep'y Sheriff.

Order for subpœna duces tecum.—28*th February*, 1866.

EUGENE LASÈRE
vs.
EUGÈNE ROCHEREAU AND CO. ET AL. } No. 17254.

EUGÈNE LASÈRE
vs.
ANTOINE DOPHINI ET AL. } No. 17255.

On motion of J. Magne, of counsel for Eugene Rochereau and Co. and Antoine Dolphini, defendants herein, and suggesting that the commission under which James E. Dunham, esq're acted as sheriff of the parish of Orleans, in the years 1862 and 1863, etc., is material evidence, and necessary for the trial of this case:

It is ordered by the court that said James E. Dunham, late sheriff of this parish do bring into court on Friday, the 2nd of March, 1866, at 11 o'clock a., m., his commission of sheriff of the parish of Orleans above described.

45 *Subpœna duces tecum.*

State of Louisiana, sixth district court of New Orleans.

The State of Louisiana to James E Dunham, greeting:

You are hereby commanded in the name of the State of Lousiana, and of the sixth district court of New Orleans, to be and appear, and to bring with you your commission as sheriff of the parish of Orleans, for the years 1862 and 1863, before our sixth district court of New Orleans, on Friday, the 2nd day of March, 1866, at 11 o'clock a. m., then and there to be used and read in evidence, in a certain cause now depending therein, between Eugene Lasére and Eugene Rochereau and Co., and Antoine Dolphini, et al., and herein fail not, under the penalty of two hundred and fifty dollars.

Witness the Honorable Guy Duplantier, judge of said court, at the city of New Orleans, this 28th day of February, 1866, and in the ninetieth year of the Independence of the United States.

[L. S.] (Signed) LOUIS J. LEFEBVRE,
Dep'y Clerk.

Sheriff's return.

Received, February 28th, 1866, on the 1st day of March, 1866, served copy of the within subpœna duces tecum on James E. Dunham
47 by leaving it into the hands of Weizburger, said James E. Dunham's agent.

Sheriff's fees, $1.00.

(Signed) JOHN HECTOR,
Dep'y Sheriff

Order for subpœna duces tecum.—14*th March*, 1866.

EUGÈNE LASÈRE
vs.
EUGÈNE ROCHEREAU AND CO. ET AL. } No. 17254.
AND
EUGÈNE LASÈRE
vs.
ANTOINE DOLPHINI ET AL. } No. 17255.

On motion of J. Magne, of counsel for Eugéne Rochereau and Co. and Antoine Dolphini, defendants herein, and on suggesting that the

commission under which James E. Dunham, esq. acted as sheriff of the parish of Orleans, in the years 1862 and 1863, etc., is material evidence, and necessary for the trial of this case:

It is ordered by the court that said James E. Dunham, late sheriff of this parish, do bring into court, on Friday, the 16th of March, 1866, at 11 o'clock a. m., his commission of sheriff of the parish of Orleans, above described.

Order and continuance.—13th April, 1866.

48 EUGÈNE LASÈRE *vs.* EUGÈNE ROCHEREAU AND CO. ET AL. } No. 17255.

AND

EUGÈNE LASÈRE *vs.* ANTOINE DOLPHINI ET AL. } No. 17255.

These cases fixed for this day, not having been reached, were ordered by the court to be continued with preference.

Agreement of counsel and evidence.—Filed April 19th, 1866.

ENGÈNE LASÈRE *vs.* EUGÈNE ROCHEREAU ET AL. } No. 17254.

AND

EUGÉNE LASERE *vs.* ANTOINE DOLPHINI ET AL. } No. 17255.

Sixth district court of New Orleans.

Agreed that these two cases be submitted and argued together on the day fixed for trial, to determine, first, the nullity or validity of the judgments or orders of seizure and sale and subsequent proceedings in the cases of E. Rochereau et al. vs. Eugène Lasère, and of Antoine
49 Dolphini vs. Eugène Lasère, Nos. of 6th district court, the questions of rent, damages, etc., being adjourned over to await the above decision.

Plaintiff's evidence.

1°. The record and all proceedings in the case of E. Rochereau et al vs. Eugène Lasère, No. 10804, of 6th district court.

2°. The record and all proceedings in the case of Dolphini vs. Engène Lasère, No. 10809, of the 6th district court.

3°. Document A, dated 9th May, 1863, signed C. W. Kilbourn, provost marshal.

4°. Document B.—Oath of allegiance.

5° E. S. WURZBURGER sworn, says:

I am a deputy sheriff of this parish; was, at date of the sale of Rochereau against Lasère, in charge of the sheriff's office, as chief clerk. It is not known to me that notices of the seizure and sale were posted, as in cases of attachment, for the sale of Lasère's property. It is not usual to post writs of seizure and sale, on the appointment of curator ad

hoc for absentees. The return on the writs will show how notices and advertisements were given.

(Signed) END. S. WURZBURGER,
Dep'y Sheriff.

E. Bermudez's testimony.

50 I think Mr. Eugène Lasère arrived in Mobile in the latter part of May or the early part of June, 1863, and know that he continued to reside there up to the fall of that city, in April, 1865; that he never had the intention of changing his domicil from New Orleans to any other point, and like all the expelled citizens who were in that city, lived there temporarily only; and that after the fall of that city he lost no time to return to New Orleans, where, so far as my knowledge goes, he has always had his domicil for years and years past, and that he was for a number of years clerk of the supreme court of Louisiana, at New Orleans.

(Signed) E. BERMUDEZ.

Defendants' evidence.

1°. Admitted that Governor Shepley held his appointment under President Lincoln's commission, and that he (Shepley) commissioned James E. Dunham, sheriff—sheriff of the parish of Orleans, who acted as such in the sales of plaintiff's property.

2°. Admitted that, when Bermudez says that Lasère intended not to change his domicil from New Orleans, that this fact was gathered from declarations of Lasère himself.

(Signed) ALBERT VOORHIES,
Att'y for Plaintiff.

(Signed) J. MAGNE,
Att'y for Rochereau & Co. et als., and for Dolphini et als.

(Signed) MILES TAYLOR,
Att'y for Mrs. Bullitt.

51 DOCUMENT A.

Notice to leave New Orleans.—Filed 18th April, 1866.

OFFICE PROVOST MARSHAL PARISH OF ORLEANS,
No. 67 CARONDELET STREET,
New Orleans, May 9th, 1863.

Mr. EUGÈNE LASÈRE:

In accordance with General Orders, No. 35, Headquarters Department of the Gulf, you being a registered enemy of the United States, are hereby notified that you must leave this parish for the so-called confederacy, before the 15th inst.

Transportation will be furnished you to Madisonville or some other point between that and Mississippi City on any day between the 11th and 15th inst., inclusive.

You will be allowed to carry the following provisions, clothing, etc., viz: The equivalent of ten days ration in food, such wearing apparel as you have in actual use, and the necessary beds and bedding required for your personal use.

By command of Brigadier General Bowen, provost marshal general, Department of the Gulf.

C. W. KILBOURN,
Provost Marshal New Orleans, La.

52 DOCUMENT B.

Oath of allegiance.—Filed 18th April, 1866.

UNITED STATES OF AMERICA:

No. 120.] UNITED STATES COMMISSIONER'S OFFICE,
No. 126 Exchange Alley.

I, Eugène Lasère, do solemnly swear or affirm, in the presence of Almighty God, that I will henceforth faithfully defend the Constitution of the United States, and the Union of States thereunder; and that I will, in like manner, abide by and faithfully support all laws and proclamations which have been made during the existing rebellion with reference to the emancipation of slaves. So help me God.

(Signed) EUGENE LASÈRE. [L. S.]

Sworn to and subscribed before me this 16th day of June, A. D. 1865.

This is to certify that the above-named has taken the amnesty oath, in virtue of the Executive proclamation, on the 29th of May, 1865.

[Stamp.]

(Signed) D. AUGUSTIN, [L. S.]
United States Commissioners for Eastern District of Louisiana.

53 *Reasons for judgment in suit No. 17254.—Filed 21st November, 1866.*

EUGÈNE LASÈRE
vs.
EUGÈNE ROCHEREAU AND CO. ET AL. } No. 17254.

This case, presenting the same points raised in the case of Lasère vs. Antoine Dolphini et al., No. 17255 of the docket of this court, there must be a judgment against the plaintiff, for the reasons assigned in the Dolphini case.

It is therefore adjudged and decreed that the demand of the plaintiff, Eugène Lasère, be rejected, and that there be judgment herein for the defendants, with costs.

Judgment (in suit No. 17254.)—Entered November 21st, 1866.

EUGÈNE LASÈRE
vs.
EUGÈNE ROCHEREAU AND CO. ET AL. } No. 17254.

For the reasons assigned in the written opinion of the court, this day delivered and filed herein—

It is adjudged and decreed that the demand of the plaintiff, Eugène Lasère, be rejected, and that there be judgment herein for the defendants, with costs.

54 Judgment signed 21st December, 1866.

(Signed) G. DUPLANTIER, *Judge.*

Reasons for judgment (in suit No. 17255.)—Filed 21st November, 1866.

EUGÈNE LASÈRE
vs.
ANTOINE DOLPHINI ET AL. } No. 17255.

Sixth district court.

This action is instituted to recover certain real estate sold by the sheriff of this parish to one of the defendants, Mrs. C. Bullitt, under an order of seizure and sale, issued against the present plaintiff at the instance of the other defendant, A. A. Dolphini, on the ground that the sale is an absolute nullity, owing to sundry irregularities in the executory proceedings under which the sale was effected.

It appears from the evidence in the record that, after the capture of New Orleans by the Federal forces, the present plaintiff, Eugène Lasère, who at the time was a citizen of this State and a resident of this city, was sent across the line as a registered enemy by order of the military commandant.

When he left the city for Mobile, where he resided until after the termination of the war, he was owing Dolphini a mortgage note.
55 This claim remaining unpaid at its maturity, and Lasère being absent from the State, with no residence in it or agent to represent him, Dolphini instituted executory proceedings against him through a curator ad hoc, and his mortgaged property, now sought to be recovered, was sold under the proceedings, after demand of payment and notice of seizure had been served upon the curator ad hoc.

With these facts shown, Lasère's objections raised against the validity of the sale of his property are in substance as follows:

He contend—first, that no demand of payment nor notice of seizure were placarded at any public place as required by law in the executory proceedings had against him; and 2ndly, that he was not legally a party to the executory proceedings because, in the first place he could not be cited through a curator ad hoc, inasmuch as he was at the time a citizen of the State, only temporarily absent; and lastly, because, under the act of Congress of 1862, prohibiting all commercial intercourse between the inhabitants of the seceded States within the confederate lines and the people of the rest of the United States, he had no standing in judgment before the courts of this city, either as plaintiff or as defendant.

Upon a careful examination of the laws regulating the manner in which executory proceedings are to be conducted, I cannot concur with the plaintiff in the opinion that it was essentially necessary for the validity of the sale of his property, represented as he was by a
56 curator ad hoc, that a demand of payment of the debt sought to be recovered against him, and notice of seizure of his property should have been posted or placarded at a public place.

This formality of placarding contended for by the plaintiff is one peculiar to suits commenced by writ of attachment and is not required in proceedings via executira.

The law requiring it refers only to the citation intended for the debtor, but which cannot be served upon him owing to the fact that either he is absent or conceals himself; but in proceedings via executira, no citation issues, none is intended to be served upon the debtor, hence none is to be posted up or placarded.

In fact, the only processes which in executory proceedings the law

contemplates should be served upon the debtor are a demand of payment, and a notice of seizure, and these, according to act 737 of the Code of Practice, are to be served in case of absence of the debtor upon his curator ad hoc.

Neither can I entertain the plaintiff's opinion, that a citizen of this State who absents himself only temporarily, but when departing leaves neither a residence nor an agent to represent him, cannot be proceeded against by means of the appointment of a curator ad hoc.

The law which provides for the appointment of this judicial representative of an absent debtor against whom suit is instituted, makes
57 no discrimination between a temporary and a permanent absence, none between a citizen and an alien.

As for the act of Congress relied upon by the plaintiff, it is evident to my mind that it cannot be extended to his case. He was in this city at the time of its capture by the Federal forces; it was then his duty, when the opportunity was given to him, to have renewed his allegiance to the Government; his failure to do so, nay, his declaration of enmity to the Government which brought about his expulsion from this city, was, in the eyes of the law, a wrongful act, and there is no principle, I apprehend, better settled than this, that no one can derive any advantage from his own wrong.

But furthermore, the congressional act of 1862 cannot be made to operate so as to confer more favors upon or give greater advantages to one who in a moment of forgetfulness has forsaken his Government than to one whose fidelity has never failed.

And such would certainly be the inevitable consequence where the plaintiff's construction of the act of Congress *be* the correct one and its provisions applied to his case.

For these reasons it is now adjudged and decreed that the plaintiff's demand be rejected and that there be judgment herein for the defendants with costs.

58 *Judgment in suit No.* 17255.—*Entered* 21*st November*, 1866.

EUGENÈ LASÈRE
vs.
ANTOINE DOLPHINI ET AL. } No. 17255.

For the reasons assigned in the written opinion of the court this day delivered and filed in this case:

It is adjudged and decreed that the plaintiff's demand in this case be rejected and that there be judgment herein for the defendants with costs.

Judgment signed 21st December, 1866.

(Signed) G. DUPLANTIER, *Judge.*

Motions and grounds for a new trial.—Filed 24*th November*, 1866.

EUGENE LASÈRE
vs.
EUGENE ROCHEREAU AND CO. ET AL. } No. 17254.

AND

EUGÈNE LASÈRE
vs.
ANTOINE DOLPHINI ET AL. } No. 17255.

Sixth. district court.

In the above-entitled cases the plaintiffs begs leave to file this his application for a new trial on the grounds:

59 1st. That the judgments rendered therein, are contrary to law and evidence.

2nd. That the appointment of a curator ad hoc was not warranted by law; and

3rd. That the status of the plaintiff being at the time of the institution and consummation of these proceedings, sought to be annulled, that of an inhabitant of an insurrectionary district, so declared by Congress, he, the said plaintiff, was disqualified and incapacitated by law to appear in this court either in the capacity of plaintiff, defendant, or intervenor, without reference to his individual status of loyalty or non-loyalty.

Prays for general relief, and as in duty bound, etc.

(Signed) A. AND M. VOORHIES,
Attorneys.

Order.—Rule for new trial.—24th November, 1866.

EUGÈNE LASÈRE
vs.
EUGÈNE ROCHEREAU AND CO. ET AL. } No. 17254.

AND

EUGÉNE LASÈRE
vs.
ANTOINE DOLPHINI ET AL. } No. 17255.

On motion of A. and M. Voorhies, attorneys for the plaintiffs in
60 these cases, it is ordered that the defendants therein do show cause, on the 4th December, 1866, at eleven o'clock a. m., why a new trial should not be granted herein, on the grounds filed.

Sheriff's return.—Filed 3d December, 1866.

Received, November 26th, 1866, and, on the 27th of the same month and year, served copy of the within rule on P. Magne, through C. E. Schmidt, esq're, his representative; and on the 20th of the same month and year, served copy of the within rule personally on Miles Taylor, esq're, attorney herein.

Returned same day.

Sheriff's fees, $1.00

(Signed) G. TOURNADE,
Dep'y Sheriff.

Order.—Rule continued.—4th December, 1866.

EUGÈNE LASÈRE
vs.
EUGÉNE ROCHEREAU AND CO. ET AL. } No. 17254.

AND

EUGÈNE LASÈRE
vs.
ANTOINE DOLPHINI ET AL. } No. 17255.

61 The rule hour having expired, it is ordered, on motion of counsel for plaintiff, that the rules for a new trial in these cases be continued to Thursday, the 6th inst., at 11 a. m.

Order.—Rule submitted.—6th December, 1866.

EUGENE LASERE
vs.
EUGENE ROCHEREAU AND CO. ET AL. } No. 17254.

AND

EUGENE LASERE
vs.
ANTOINE DOLPHINI ET AL. } No. 17255.

The rules for a new trial came on this day—A. Voorhies, for plaintiff in rule; C. E. Schmidt, for defendant therein—and after hearing pleadings and argument of counsel, the same was submitted.

Reasons for judgment on rule.—Filed 20th December, 1866.

Sixth district court.

EUGENE LASERE
vs.
ANTOINE DOLPHINI ET AL. } No. 17255.

AND

EUGENE LASERE
vs.
EUGENE ROCHEREAU AND CO. ET AL. } No. 17254.

62 I see no reasons for disturbing the judgments rendered in these cases. In my opinion the law makes a marked difference between residence and domicil. True it is a party cannot be an absentee when he has a domicil in this State, but in point of fact, he may be absent from the State with no residence within its limits, although his domicil is not abroad.

Such was the plaintiff's case. Let the rules for a new trial be dismissed.

Order dismissing rule.—20th December, 1866.

EUGENE LASERE
vs.
EUGENE ROCHEREAU AND CO. ET AL. } No. 17254.

AND

EUGENE LASERE
vs.
ANTOINE DOLPHINI ET AL. } No. 17255.

For the reasons assigned in the written opinion of the court, this day delivered and filed in these cases:

It is adjudged and decreed that the rules for a new trial in the above two cases be dismissed with costs.

Agreement of counsel as to appeal.—Filed 15th January, 1867.

63 EUGENE LASERE
vs.
EUGENE ROCHEREAU AND CO. ET AL. } No. 17254.

AND

EUGENE LASERE
vs.
ANTOINE DOLPHINI ET AL. } No. 17255.

In the sixth district court of New Orleans.

An appeal having been taken in the above-entitled two cases, it is agreed between the parties, that, in order to avoid unnecessary expense and costs, and the proceedings in each case being identically the same, the clerk will make only one transcript embodying the two cases and evidence, the same as if the two cases had been cumulated or consolidated.

(Signed) A. AND M. VOORHIES,
For Plaintiff.

(Signed) C. E. SCHMIDT,
For Rochereau and Co. and Dolphini.

(") MILES TAYLOR,
Att'y for Defendant Mrs. Bullitt.

Petition of appeal.—Filed 7th January, 1867.

EUGENE LASERE
vs.
EUGENE ROCHEREAU AND CO. ET AL. } No. 17254.

AND

64 EUGENE LASERE
vs.
ANTOINE DOLPHINI ET AL. } No. 17255.

The petition of Eugene Lasere, plaintiff in the above consolidated cases, represents:

That the judgments rendered in the said cases are, in his opinion, contrary to the law and evidence, and that he wishes to have the same reversed in the appellate court.

Wherefore your petitioner prays that a devolutive appeal be granted, returnable to the supreme court in due course of law, within the next sixty days from the date of the service of said appeals upon all the appellees, which he prays may be regularly made.

Prays for general relief, and as in duty bound, etc.

(Signed) A. AND M. VOORHIES, *Counsels.*

Order allowing appeals.

A devolutive appeal is allowed in the within cases as prayed for, returnable in the honorable the supreme court of this State, within the next sixty days from the date of service of this petition upon all the

appellees, on the appellant giving bond, with good and solvent security, conditioned as the law directs, in the sum of two hundred and fifty dollars.

65 New Orleans, January 9th, 1867.

(Signed) G. DUPLANTIER, *Judge.*

Appeal bond.—Filed January 15th, 1867.

Know all men by these presents that we, Eugene Lasere as principal, and Louis St. Martin as surety, are held and firmly bound unto all the defendants in the consolidated cases of said plaintiff vs. Eugene Rochereau et al. and vs. Antoine Dolphini et al., executors, administrators, and assigns, in the sum of two hundred and fifty dollars; for the payment whereof we bind ourselves, our heirs, executors, and administrators, firmly by these presents, sealed with our seals, and dated in the city of New Orleans, on this 15th day of January, in the year of our Lord one thousand eight hundred and sixty-seven.

Whereas the above-bounden plaintiff this day filed a petition of appeal from final judgments rendered against him in the consolidated suits of Eugene Lasere vs. Eugene Rochereau et al. and vs. Dolphini et als., No. 17254 and 17255, in the sixth district court of New Orleans:

Now the condition of the above obligation is such, that the above-bound Lasere shall prosecute said appeals and shall satisfy
66 whatever judgments may be rendered against him, or that the same shall be satisfied by the proceeds of the sale of his estate, real or personal, if he be cast in the appeal; otherwise that the said Louis St. Martin, his surety, shall be liable in his place.

(Signed) EUGENE LASERE. [L. S.]
(") LOUIS ST. MARTIN. [L. S.]

Signed, sealed, and delivered in the presence of—

Record of suit No. 10804.—Offered in evidence by plaintiff.

Sixth district court of New Orleans.

EUGENE ROCHEREAU AND CO.
vs.
EUGENE LASERE. } No. 10804.

Petition for executory process.—Filed 23rd November, 1863.

To the honorable judge of the sixth district court of New Orleans:

The petition of Eugene Rochereau and Co., a firm of this city, composed of Eugene Rochereau, Albin Rochereau, and William Thomas Hepp, respectfully shews. That they are the holders and owners
67 of three promissory notes of one thousand dollars each, bearing interest at eight per centum per annum from maturity until paid, all made and described on the 17th of February, 1862, by Eugene Lasere, of this city, payable one year after date, to his own order, and by him endorsed in blank; that, in order to secure the payment of said three notes, said Eugene Lasere mortgaged and specially hypothecated in favor of the mortgagee to enure to the use and benefit of any and all future holder or holders of said notes, a lot of ground with the buildings and improvements thereon, situate in the first district of this city, in the square bounded by Carondelet, Common, St. Charles, and Canal streets,

and designated as lot No. eleven, on a plan drawn by Hugh Grant, surveyor, on the 11th February, 1841, and annexed to an act passed before F. Grima, notary, on the 12th February, 1841.

The said lot having, in American measures, twenty feet three inches and six lines front on Common street, fifteen feet in width in the rear by a depth of eighty-five feet on one side and of eighty-seven feet on the others; and he bound himself, were it necessary to sue on said notes, to pay the lawyer's fees fixed at five per centum on the amount sued for, as will more fully appear by the act of mortgage passed on said day, the 17th of February, 1862, by Thomas Guyol, notary, a duly authenticated copy of which is annexed to and made part of this petition; and said three notes remaining unpaid and due to your petitioners are also hereto annexed and made a part thereof.

68 Wherefore they pray, the premises and annexed documents being considered, that a writ or order of seizure and sale do issue, commanding the sheriff of this parish, James E. Dunham, to seize and sell, according to law, the above-mentioned property, more fully described in the annexed act of mortgage, and out of the proceeds thereof to pay them in preference to all others: 1st, three thousand dollars; 2d, the interests thereon at eight per centum per annum from the 17|20 February, 1863, until paid; 3d, five per centum for lawyer's fee on the amount sued for; and, 4th, all the costs. They further pray for all the general and equitable relief which the nature of the case may require.

(Signed) J. MAGNE, *of Counsel.*

Order.

Let executory process issue in this case as within prayed for and according to law.

New Orleans, November 23d, 1863.

(Signed) R. K. HOWELL, *Judge.*

Act of mortgage.—Filed with petition 23rd November, 1863.

STATE OF LOUISIANA:

Be it known that, on this seventeenth day of the month of Feb-
69 ruary, in the year of our Lord one thousand eight hundred and sixty-two, before me, Theodore Guyol, a notary public, duly commissioned and sworn for the parish of Orleans, State of Louisiana, and in the presence of the witnesses hereinafter named and undersigned, personally appeared Eugène Lasère, residing in this city, unmarried, who declared and acknowledged that he is justly and truly indebted unto Albin Rochereau, also of this city, in the sum of three thousand dollars, for which amount he has given and furnished his three several promissory notes, drawn to the order of, and endorsed by, himself, for the sum of one thousand dollars each, all dated this day, bearing interest at the rate of eight per cent. per annum from maturity until paid, and made payable one year after date; which notes, after being paraphed by me, notary, to identify them with this act, were delivered to the said Rochereau, who acknowledges the receipt thereof.

And in case it shall become necessary to institute legal proceedings for the amount of *the amount of* the said notes, or of any part thereof, the said Eugène Lasère binds himself to pay the fees of the attorney at law who may be employed for that purpose, which fees are hereby fixed at five per cent. on the amount sued for.

Now, therefore, in order to secure the punctual payment of the said

notes at maturity, together with all eventual interest and attor-
70 ney's fees, the said Eugène Lasère declared that he does, by these presents, mortgage, affect, and specially hypothecate in favor of the said Albin Rochereau, and to enure to the use and benefit of any and all future holder or holders of the said notes, the said Albin Rochereau being here present and accepting, a lot of ground, with the buildings and improvements thereon, situate in the first district of this city, in the square bounded by Carondelet, Common, St. Charles, and Canal streets, and designated as lot No. eleven, on a plan drawn by Hugh Grant, surveyor, on the 11th February, 1841, and annexed to an act passed before F. Grima, notary, on the twelfth day of same month and year, the said lot having, in American measure, twenty feet three inches and six lines on Common street, fifteen feet in width in the rear, by a depth of eighty-five feet on one side, and of eighty-seven feet on the other, and being the same property purchased by the said Lasère from L. Spengenberg, by an act passed in this office, on the 20th July, 1847; he, the said Lasère, promissing and binding himself not to sell, alienate, or incumber the said property to the prejudice of this act.

According to the annexed certificate of the recorder of mortgages for this city, there is no other mortgage in the name of the said Eugène Lasère, and recorded against the said property, than the one he granted by an act passed in this office, on the 13th July, 1861, in favor of Eugène Rochereau and Co., to secure the payment of two thousand and fifty two dollars and forty-five cents, interest and costs.

71 Done and passed in my office, in the presence of William G. Latham and Prosper Camers, competent witnesses, who have signed with the parties, and me, notary, after reading the whole.

(Original signed) EUGÈNE LASERE.
ALBIN ROCHEREAU.
PROSPER CAMERS.
W. G. LATHAM.
THEODORE GUYOL,
Not. Public.

I certify the foregoing to be a true copy of the original act of record and on file among the archives of Theodore Guyol, late notary public in this city.

In faith whereof I grant these presents under my signature and seal of office, at New Orleans, this twentieth day of August, 1863.

(Signed) W. G. LATHAM,
Notary Public.

Three promissory notes annexed to petition.—Filed November 23d, 1863.

$1,000.] NEW ORLEANS, *February 17th*, 1862.

One year after date, I promise to pay to the order of myself, one thousand dollars, value received, with interest at the rate of eight per cent. per annum from maturity until paid.

E. R. & Co.

72 No. 22186.] (Signed) EUGENE LASERE.

Due 17|20 February, 1863.

" Endorsed :" Eugène Lasère.

(Written across the face in red :)

Ne varietur.

New Orleans, February 17th, 1862.

THEODORE GUYOL, *Not. Pub.*

$1,000.] NEW ORLEANS, *February 17th*, 1862.

One year after date, I promise to pay to the order of myself, one thousand dollars, value received, with interest at the rate of eight per cent. per annum from maturity until paid.

E. R. and Co. No. 22187.

(Signed) EUGÉNE LASERE.

Due 17|20 February, 1863.

(Endorsed:) Eugène Lasère.

(Written across the face in red:)

Ne varietur.

New Orleans, February 17th, 1862.

THEODORE GUYOL, *Not. Public.*

$1,000.] NEW ORLEANS, *February 17th*, 1862.

One year after date, I promise to pay to the order of myself, one thousand dollars, value received, with interest at the rate of eight per cent. per annum from maturity until paid.

E. R. and Co. No. 22188.

(Signed) EUGENE LASERE.

Due 17|20 February, 1863.

(Endorsed:) Eugene Lasere.

(Written across the face in red:)

Ne varietur.

New Orleans, February 17th, 1862.

THEODORE GUYOL, *Not. Public.*

Notice of demand of payment.—Filed 28th November, 1863.

No. 10804.] NEW ORLEANS, *November 23d*, 1863.

In the sixth district court of New Orleans.

73 EUGENE ROCHEREAU AND CO. *vs.* EUGENE LASERE. } No. 10804.

SHERIFF'S OFFICE OF THE PARISH OF ORLEANS.

TO EUGENE LASERE:

Take notice that payment is demanded of you at my office, within three days from the service hereof, of the amount claimed in the accompanying petition, with interest and costs; and, in default of payment within that delay, the property referred to in said petition will be seized and sold according to law.

(Signed) MICHEL DE ARMAS, *Dep'y Sheriff.*

Return.

After diligent search and inquiry, I was informed that Eugene Lasere, the defendant herein, has left this city and State, without leaving an agent to represent him.

(Signed) MICHEL DE ARMAS, *Dep'y Sheriff.*

Order appointing a curator ad hoc.—28th November, 1863.

EUGENE ROCHEREAU AND CO. vs. EUGENE LASERE. } No. 10804.

74 On motion of J. Magne, attorney for the plaintiffs in this case, and on showing by the sheriff's return on file, that the defendant herein has left this city and State:

Order that John Culbertson, esq're, be appointed curator ad hoc, to represent the absent defendant in this case.

Notice of appointment of John Culbertson.

The State of Louisiana, sixth district court of N. Orleans.

EUGENE ROCHEREAU AND CO. vs. EUGENE LASERE. } No. 10804.

You are hereby notified that you have been appointed by this honorable court curator ad hoc in the above case.

Clerk's office, New Orleans, this 28th November, 1863.

[L. S.] (Signed) E. H. LEHMANN, *Dep'y Clerk.*

Sheriff's return.—Filed 1st December, 1863.

Received, November 28th, 1863, and, on the same day, month, and year, served copy of the within notice of appointment personally on John Culbertson.

Returned same day.

Sheriff's fee, $0.50c.

75 (Signed) ARTHUR HART, *Dep'y Sheriff.*

Writ of seizure and sale.—Issued 23rd November, 1863.

State of Louisiana, sixth district court of New Orleans.

The State of Louisiana to the sheriff of the parish of Orleans, greeting:

EUGENE ROCHEREAU AND CO. vs. EUGENE LASERE. } No. 10804.

You are hereby commanded, in the name of the State of Louisiana, and of the sixth district court of New Orleans, to seize and sell, after the legal advertisements, and according to law, for cash, to pay and satisfy plaintiff's claim, to wit, three thousand dollars; 2nd, the interests thereon at eight per centum per annum from 17|20 February, 1863, until paid; 3rd, five per centum for lawyer's fees on the amount sued for; and, 4th, all the costs:

A lot of ground, with the buildings and improvements thereon, situate in the first district of this city, in the square bounded by Carondelet, Common, St. Charles, and Canal streets, and designated as lot No. eleven, on a plan drawn by Hugh Grant, surveyor, on the 11th February,

76 1841, and annexed to an act passed before F. Grima, notary, on

the 12th February, 1841, the said lot having, in American measure, twenty feet three inches and six lines front on Common street, fifteen feet in width in the rear, by a depth of eighty-five feet on one side, and of eighty-seven feet on the other.

And what you do in the premises, you make return thereof, together with this writ, to our said court as the law directs.

Witness the Honorable R. K. Howell, judge of our said court, this 23d day of November, in the year of our Lord one thousand eight hundred and sixty-three, and in the eighty eighth year of the Independence of the United States.

[L. S.] (Signed) E. H. LEHMANN, *Dep'y Clerk.*

Sheriff's return.—Filed May 3d, 1864.

Received, November 23d, 1863, and, on the 30th day of same month and year, served copy of the within annexed notice of demand of payment and accompanying petition, as well as copy of notice of demand of payment and accompanying petition, in the case of Ant'e Dolphini vs. this defendant, No. 10809 of the docket of this honorable
77 court, on John Culbertson, not., curator ad hoc for the defendant herein, in person; and, no payment having been made within the legal delay, I, on the 11th day of December, 1863, seized the within-described property, as well under this writ as under writ of seizure and sale in said case of Antoine Dolphini vs. this defendant, No. 10809 of the docket of this honorable court, and notify personally said John Culbertson, curator, etc., of this seizure.

And after the legal delay had expired, the said property was advertised for sale, on the ninth day of December, 1863, in the following manner, to wit, by advertisements composed in English and French, announcng the sale to take place at the Merchants and Auctioneer's Exchange, Royal street, between Canal and Custom-House streets, in the second district of this city, on the 11th day of January, 1864, at 12 o'clock m. Said advertisements were inserted and published in one paper, in the city of New Orleans, to wit, in the New Orleans Bee, from the said ninth day of December, 1863, to the day of sale, being full thirty days from the date of the first notice given in said newspaper. Said advertisements were inserted and published in said newspaper, on the 9th, 18th, 25th days of December, 1863; 1st and 11th days of January, 1864, both in English and French; and, after having further complied with and performed all the additional previous requisites, and after the said property had been duly appraised, did expose at public sale, according to law, at the said Merchants and Auctioneer's Exchange, Royal street, between Canal and Custom-House streets, in the second district of
78 this city, on the said eleventh day of January, eighteen hundred and sixty-four, at 12 o'clock m., having first announced, in a loud and audible voice, the terms and conditions hereinafter expressed and specified, and having also read, vebatim, and in a loud and audible voice, the certificate of the recorder of mortgages for the parish of Orleans and city of New Orleans, delivered on the day of sale, and showing the mortgages and lien existing at the time of sale, in the name of said defendant against the said property:

When Samuel Moore, being the highest and last bidder, for account of Eliza White, wife of Cuthbert Bullitt, the said property was adjudicated to the said Samuel Moore, for account of Eliza White, wife of Cuthbert Bullitt, for the price and sum of six thousand and fifty dollars, payable cash, and which I have received.

Amount of sale	$6,050 00
Amount of rent received	135 00
Total amount of cash received	$6,185 00

Out of which deduct costs, charges and taxes, as detailed on the reverse hereof, say	$947 95
And paid over the nett proceeds, say	$5,237 05

Five thousand two hundred and thirty-seven dollars and five cents to J. Magne, attorney for all plaintiffs in both cases.

Returned May 2nd, 1864.

(Signed) MICHEL DE ARMAS,
Dep'y Sheriff.

79 Amount of claim	$3,000 00
8% interest thereon from the 25 February, 1863, to the day of sale, 11th January, 1864, 320 days	$213 34
5% lawyer's fees	"150 00
	$3,363 34

Also seized generally in the hands of N. M. Benachi, and especially the rent and rents due, or which hereafter might be due by him, as tenant of said premises, of which said seizure I received from said tenant the sum of one hundred and thirty-five dollars.

(Signed) MICHEL DE ARMAS
Dep'y Sheriff.

Charges.

Printing	$ 24 00
Clerk's fees suit No. 10804, Duncan	" 10 25
" " " " 10809 "	" 10 00
Sheriff's " " " 10804, Dunham	" 9 75
" " " " 10809 "	" 7 25
Certificate of mortgage	" 2 00
Appraiser's fees C. T. Dugazon and J. V. Gourdain	" 10 00
Erasing mortgages and proces' verbal	" 6 50
Commission on sale	" 40 25
Draining claim paid in full, as per books drain'g Co	"
John Culbertson, curator ad hoc, fee	"125 00
J. A. D'Hemecourt, for sketch	2 50
	$248 10
	$248 10
80 Exchange duty	7 00
Taxes, city tax, 1861, int. and costs	"256 75
" " 1862, " " "	"150 00
Commission	2 00
State tax, 1861,	" 44 70
" " 1862	" 44 70

" " 1863		" 44 70
City " 1863		"150 00
		$947 95
Amount of E. Rochereau's claim, int., etc		$3,363 34
" " Dolphini's " " "		"2,431 45
		$5,794 79

Advertisements annexed to return.

EUGENE ROCHEREAU AND CO. *vs.* EUGENE LASERE.
ANTOINE DOLPHINI *vs.* SAME.
} Nos. 10804 and 10809.

Sixth district court of N. O.

By virtue of two writs of seizure and sale to me directed by the honorable the sixth district court of New Orleans, in the above-entitled cases, I will proceed to sell at public auction, on Monday, January 11th, 1864, at 12 o'clock m., at the Merchants and Auctioneer's Exchange, Royal street, between Canal and Custom-House streets, in the second district of this city:

81 A lot of ground with the buildings and improvements thereon, situate in the first district of this city, in the square bounded by Carondelet, Common, St. Charles, and Canal streets, and designated as lot No. eleven, on a plan drawn by Hugh Grant, surveyor, on the 11th day of February, 1841, and annexed to an act passed before F. Grima, late a notary public in this city, on the 12th of February, 1841.

Said lot having, in American measure, twenty feet three inches and six lines front on Common street, fifteen feet in width in the rear, by a depth of eighty-five feet on one side, and of eighty-seven feet on the other.

The buildings and improvements comprise a three-story brick-house, slate-roofed, No. 118 Common street, having one large store or office-room, with fire-places on each floor, rear buildings, and now occupied by N. M. Benachi, esq., consul of Greece.

Being the same property which the defendant acquired by purchase from L. Spangenberg per act passed before Théodore Guyol, late a notary public in this city, dated July 20th, 1847, seized in the above suit.

TERMS.—Cash on the spot.

JAMES E. DUNHAM,
Sheriff of the Parish of Orleans.

December 9, 18, 26; January 2, 11.

82 EUGÈNE ROCHERAU AND CO. *vs.* EUGÈNE LASÈRE.
ANTOINE DOLPHINI *vs.* LE MÊME.
} No. 10804 et 10809.

Sixieme court de district de la Nouvelle Orléans.

En vertu de deux writs de saisie et vente à moi adressés par l'honorable séxiéme cour de district de la Nouvelle Orléans, dans les affaires ci-dessus je procederai le lundi, 11 de janvier, 1864, a midi, à la bourse des negociants et des encanteurs, rue Royale, entre celles du Canal et de la Douane, dans le deuxiéme district de cette ville à l'adjudication de la proprieté dont suit la description, savoir :

Un terrain situé dans le premier district de cette ville dans l'ilet borné par les rues Carondelet, de la Commune, St. Charles, et du Canal, et désigné par le No. enze, suivant plan dressé par Hugh Grant, voyer, le 11 de fevrier, 1841, et annexé à un acte un rapport de F. Grima, ci devant notaire public en citte ville, en date du 12 de fevrier, 1841.

Le dit terrain ayant, mesure américaine, vingt pieds trois pouces et six lignes de face à la rue de la Commune, quinze pieds de larguer dans le fond, un une profondeur de quatre-vingt-cinq pieds d'une côte et de quatre-vingt-sept pieds de l'autre.

Ensemble avec les batisses et améliorations qui s'y trouvent,
83 consistant en une maison en briques à deux étages, couverte en ardoise portant, le No. 118 sur la rue de la Commune ayant au rez-de-chaussée une grande pièce avec foyers, servant de magazin ou de bureau, même disposition au premier et au second arriere batisses, dependances et appartenances louées maintenant à N. M. Binachi, consul Grec.

Cette propeieté appartient au defendeur au moyen de l'acquisition qu'il en a faite de L. Spangenbery, par acte au rapport de Théodore Guyol, ci-devant notaire public en citte ville, en date du 20 juillet, 1847, saisié dans les affaires ci-dessus.

CONDITIONS.—Comptant au moment de l'adjudication.

JAMES E. DUNHAM.
Sheriff de la Paroisse d' Orléans.

Decembre 9, 18, 26 ; janvier 2, 11.

Notice of demand of payment to defendant, annexed to return.

NEW ORLEANS, *November 23d*, 1863.

EUGÈNE ROCHEREAU AND CO. *vs.* EUGÈNE LASÈRE. } No. 10804.

In the sixth district court of New Orleans.

SHERIFF'S OFFICE OF THE PARISH OF ORLEANS.

84 To EUGÈNE LASÈRE:

Take notice that payment is demanded of you, at my office, within three days from the service hereof, of the amount claimed in the accompanying petition, with interest and costs; and, in default of payment within that delay, the property referred to in said petition will be seized and sold according to law.

(Signed) MICHEL DE ARMAS,
Dep'y Sheriff.

Return.

After diligent search and inquiry I was informed that Eugène Lasère, the defendant herein, has left this city and State without leaving an agent to represent him.

Returned November 28th, 1863.

(Signed) MICHEL DE ARMAS,
Dep'y Sheriff.

Notice of demand of payment on curator ad hoc, annexed to return.

NEW ORLEANS, *November 30th*, 1863.

EUGÈNE ROCHEREAU AND CO.
vs.
EUGÈNE LASÈRE. } No. 10804.

In the sixth district court of New Orleans.

SHERIFF'S OFFICE OF THE PARISH OF ORLEANS.

85 To EUGÈNE LASÈRE, (John Culbertson, curator ad hoc:)

Take notice that payment is demanded of you, at my office, within three days from the service hereof, of the amount claimed in the accompanying petition, with interest and costs; and, in default of payment within that delay, the property referred to in said petition will be seized and sold according to law.

(Signed) MICHEL DE ARMAS,
Dep'y Sheriff.

Sheriff' return.

On the 39th November, 1863, served a copy of this notice of demand and accompanying petition on John Culbertson, esq're, curator ad hoc to defendant herein, personally.

(Signed) ROBERT SWAIN,
Dep'y Sheriff.

Notice of seizure, for curator ad hoc, annexed to return.

NEW ORLEANS, *November 4th*, 1863.

EUGÈNE ROCHEREAU AND CO.
vs.
EUGÈNE LASÈRE. } No. 10804.

In the sixth district court of New Orleans.

SHERIFF'S OFFICE, PARISH OF ORLEANS.

86 To EUGÈNE LASÈRE, (John Culbertson, curator du hoc:)

Take notice that I have seized, and, in three days from the service hereof, shall proceed to advertize and sell according to law the following-described property, to wit:

A lot of ground, with the buildings and improvements thereon, situate in the first district of this city, in the square bounded by Carondelet, Common, St. Charles, and Canal streets, and designated as lot

No. eleven, on a plan drawn by Hugh Grant, surveyor, on the 11th day of February, 1841, and annexed to an act passed before F. Grima, late a notary public in this city, on the 12th of February, 1841.

Said lot having, in American measure, twenty feet three inches and six lines front on Common street, fifteen feet in width in the rear, by a depth of eighty-five feet on one side, and of eighty-seven feet on the other.

To pay and satisfy the writ issued in this case, say, the sum of $3,000.00c., with interest and costs, unless the same is immediately paid.

(Signed) MICHEL DE ARMAS,
Dep'y Sheriff.

Return.

On the 4th December, 1863, served a copy of this writ on John Culbertson, esq're, curator ad hoc to defendant herein, personally.

(Signed) ROBERT SWAIN,
Dep'y Sheriff.

87 *Notice of seizure of rent on N. M. Binachi, annexed to return.*

NEW ORLEANS, *December 7th*, 1863.

STATE OF LOUISIANA:

SHERIFF'S OFFICE, PARISH OF ORLEANS.

EUGÈNE ROCHEREAU AND CO.
vs.
EUGÈNE LASÈRE,
AND
ANTOINE DOLPHINI
vs.
SAME.
} No. 10804 and 10809.

In the sixth district court of New Orleans.

Please to take notice that, by virtue of two writs of seizure and sale issued in the above-mentioned suits, I seize in your hands, all the goods, chattels, lands, tenements, rights, and credits, moneys, effects, bills of exchange, promissory notes, or property of any kind which you may now or hereafter have in your possession or under your control, belonging to the defendant, and especially, the rent or rents, now or which thereafter may be due by you as tenant of the house No. 118 Common street, between St. Charles and Carondelet streets, in the first district of this city, which you will hand over to me.

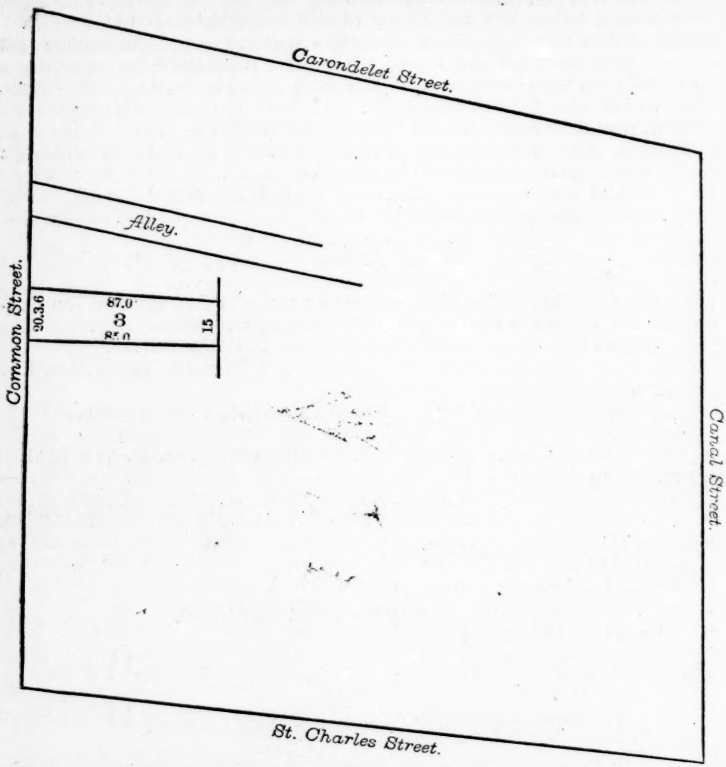
(Signed) MICHEL DE ARMAS,
Dep'y Sheriff.

Return.

On the 8th day of December, 1863, served a copy of the within notice of garnishee on N. M. Binachi, personally.

(Signed) H. VIXORO,
Dep'y Sheriff.

88 *Sketch of J. A. D'Hémécourt, annexed to sheriff's return.*



I certify that the property designated on the above sketch by the No. 3, is the same seized in the cases of Eugène Rochereau and Co. vs. Eugène Lasère and Antoine Dolphini vs. the same, Eugène Lasère, 6th district court of New Orleans, No. 10804 and 10809 of the docket of said court.

New Orleans, January 6th, 1864.

(Signed) J. A. D'HÉMÉCOURT,
Deputy City Surveyor.

89 *Record of suit No.* 10809. *Offered in evidence by plaintiff.*

Sixth district court of New Orleans.

ANTOINE DOLPHINI
vs.
EUGENE LASERE. } No. 10809.

Petition for executory process.—Filed 24th November, 1863.

To the honorable judge of the sixth district court of New Orleans:

The petition of Antonio Dolfini, who resides in the republic of Switzer-

land, and is acting herein through his agents, Eugène Rochereau and Co., of this city, respectfully represents:

That he is the holder and owner of one promissory note of two thousand and fifty-two $\frac{45}{100}$ dollars, bearing interest at eight per centum per annum from maturity until paid, made and subscribed on the 13th of July, 1861, by Eugène Lasère, of this city, payable on the 10th of May, 1862, to his own order, and by him endorsed in blank, which remains unpaid, and is annexed to and made a part of this petition.

That, in order to secure the payment of said note, said Eugène Lasère mortgaged and especially hypothecated in favor of any and all
90 holder and holders of said note, a lot of ground with the buildings and improvements thereon, situate in the first district of this city, in the square bounded by Carondelet, St. Charles, Common, and Canal streets, and designated as lot No. eleven, on a plan drawn by Hugh Grant, surveyor, on the 11th of February, 1841, and annexed to an act passed before Felix Grima, a late notary in this city, on the 12th day of the same month and year, the said lot having, in American measure, twenty feet three inches and six lines front on Common street, fifteen feet in width in the rear, by a depth of eighty-five feet on one side, and of eighty-seven feet on the other.

And that he bound himself, were it necessary to sue on said note, to pay the lawyer's fees, fixed at five per centum on the amount sued for, as the whole will more fully appear by the act of mortgage passed on said day, the 13th of July, 1861, by Theodore Guyol, notary, a duly authenticated copy of which is annexed to and made a part of this petition.

Wherefore he prays, the premises and annexed documents being considered, that a writ of order of seizure and sale do issue, commanding the sheriff of this parish, James E. Dunham, to seize and sell, according to law, the above-mentioned property more fully described in annexed act of mortgage, and, out of the proceeds thereof, to pay to him by preferencee to all others: 1st, two thousand and fifty-two $\frac{45}{100}$ dollars; 2d, the interests thereon at eight per centum per annum from the 10–13th of May, 1862, until paid; 3d, five per centum for lawyer's fees on the amount sued for; and, 4th, all the costs.

91 He further prays for all the general and equitable relief which the nature of the case may require.

(Signed) A. MAGNE, *of Counsel.*

Order.

Let executory process issue in this case as within prayed for and according to law.

New Orleans, November 24th, 1863.

(Signed) R. K. HOWELL, *Judge.*

Promissory note.—Filed with petition 24th November, 1863.

$2,052.45] NEW ORLEANS, *13th July*, 1861.

On the 10th day of May next, 1862, after date, I promise to pay to the order of myself, two thousand and fifty-two $\frac{45}{100}$ dollars, value received, with interest, at the rate of eight per cent. per annum from maturity until paid.

E. R. and Co. No. 21175.

(Signed) EUGÈNE LASÈRE.

Due 10–13 May, 1862.

(Endorsed:)

(Signed) EUGÈNE LASÈRE.

(Written in red across the face:)
Ne varietur.
New Orleans, July 13th, 1861.

THEODORE GUYOL,
Not. Public.

Act of mortgage.—Filed with petition 24th November, 1863.

No. 92. 13th July, 1861.

92 Mortgage. Eugene Lasère to Eugène Rochereau and Co., (B. 77, fol. 294.)

STATE OF LOUISIANA:

Be it known that, on this thirteenth day of the month of July, in the year of our Lord one thousand eight hundred and sixty-one, before me, Théodore Guyol, a notary public duly commissioned and sworn for the parish of Orleans, State of Louisiana, and in the presence of the witnesses hereinafter named and undersigned, personally appeared Eugène Lasère, of this city, who declared that he is justly and truly indebted, unto Eugène Rochereau, Albin Rochereau, and William T. Hepp, co-partners, under the style and firm of Eugène Rochereau and Co., of this city, in the sum of two thousand and fifty-two dollars and forty-five cents, borrowed money, for which he has furnished his promissory note, dated this day, and made payable on the tenth day of May, eighteen hundred and sixty two, with interest from and after maturity, if not then punctually paid, at the rate of eight per cent. per annum until final payment.

Which note, after having been paraphed by me, notary, to identify it with this act, was delivered to the said Allen Rochereau, who hereby acknowledged the receipt thereof, in the name of his said firm.

93 And in case it shall become necessary to institute legal proceedings for the recovery of the amount of the said note, or of any part thereof, the said Eugène Lasère, binds himself to pay the fees of the attorney at law who may be employed for that purpose; which fees are hereby fixed at five per cent. on the amount sued for.

Now, therefore, in order to secure the punctual payment of the said note at maturity, together with all eventual interest and attorney's fees, the said Eugène Lasère declared that he does, by these presents, mortgage, affect, and specially hypothecate in favor of the said firm of Eugène Rochereau and Co., and to enure to the use and benefit of any and all future holder or holders of the said note.

The said Allen Rochereau being here present, and accepting for his said firm a lot of ground with the buildings and improvements thereon, situate in the first district, in the square bounded by Carondelet, Common, St. Charles, and Canal streets, and designated as lot No. (11,) eleven, on a plan drawn by Hugh Grant, surveyor, on the 11th February, 1841, and annexed to an act passed before Felix Grima, late notary in this city, on the 12th day of the same month and year.

The said lot having, in American measure, twenty feet three inches and six lines front on Common street, fifteen feet in width in the rear, by a depth of eighty-five feet on one side, and of eighty-seven on the other, and being the same property which the said Lasère purchased

94 from Leonard Spuzenberg, by an act passed in this office, on the twentieth day of July, eighteen hundred and forty-seven.

He, the said Lasere, promising and binding himself not to sell, alienate or encumber the said property to the prejudice of this mortgage.

And he moreover binds himself to keep the buildings on said lot constantly insured against loss by fire to an amount not less than two thousand dollars, and to transfer the policies of insurance to the said mortgagees, with the full and final payment of the said note, hereby consenting and agreeing that the said mortgagees shall have the right to transfer such policies to any future holder or holders of said note, and that in case of failure or neglect on the part of him, the said mortgagor, to effect such insurance, any holder or holders of the said note shall have the right to do so, and the re-imbursement of all sums paid for that purpose shall be secured by this mortgage.

The said property is free from incumbrance, as appears from the annexed certificate of the recorder of mortgages for this parish, with the exception of this mortgage granted by the said Eugene Lasere, in favor of said firm of E. Rochereau and Co., by an act passed in this office, on the tenth day of May, eighteen hundred and sixty, to secure the payment of the sum of three thousand five hundred dollars, with all eventual interest and cost, which mortgage the said Lasere binds himself to have cancelled immediately, the notes representing the said sum having been paid.

95 Done and passed in my office, in the city of New Orleans, on the day, month, and year first above written, in the presence of William Latham and Prosper Camers, witnesses, who have signed with the said parties and me, notary, after reading the whole.

EUGENE LASERE.
ALBIN ROCHEREAU.
W. G. LATHAM.
P. CAMERS.
THEODORE GUYOL,
Notary Public.

The foregoing is a true copy of the original act extant in the register of Theodore Guyol, late notary public, which are in my possession and custody, as 'is successor in office.

New Orleans, 23d November, 1863.

[L. S.] (Signed) FELIX McCULLOCH,
Notary Public.

(Cancelled stamp.)

Notice of demand of payment and return.—Filed 28th November, 1863.

ANTOINE DOLPHINI *vs.* EUGENE LASERE. } No. 10809.

NEW ORLEANS, *November 24th*, 1863.

In the sixth district court of New Orleans.

SHERIFF'S OFFICE OF THE PARISH OF NEW ORLEANS.

96 To EUGENE LASERE:

Take notice that payment is demanded of you, at my office within three days from the service hereof, of the amount claimed in the accompanying petition, with interests and costs; and, in default of payment within that delay, the property referred to in said petition will be seized and sold, according to law.

(Signed) MICHEL DE ARMAS,
Dep'y Sheriff.

Return.

After diligent search and inquiry I was informed that Eugene Lasere, the defendant herein, has left this city and State without leaving an agent to represent him.

Returned November 28th, 1863.

(Signed) MICHEL DE ARMAS,
Dep'y Sheriff.

Order appointing John Culbertson curator ad hoc.—28th November, 1863.

ANTOINE DOLPHINI
vs. } No. 10809.
EUGENE LASERE.

On motion of J. Magne, attorney for the plaintiff in this case, and on shewing, by the sheriff's return on file, that the defendant
97 herein has left this city and State:

Ordered, that Jno. Culbertson, esq're, be appointed curator ad-hoc, to represent the absent defendant in this case.

Notice of appointment (for Jno. Culbertson.)—Issued 28th November. 1863.

The State of Louisiana, sixth district court of New Orleans.

ANTOINE DOLPHINI
vs. } No. 10809.
EUGENE LASERE.

TO JOHN CULBERTSON:

You are notified that you have been appointed by this honorable court curator ad hoc in the above case.

Clerk's office, New Orleans, this 28th November, 1863.

[L. S.] (Signed) E. H. LEHMANN,
Dep'y Clerk.

Sheriff's return.

Received, November 28th, 1863, and, on the same day, month, and year, served copy of the within notice of appointment, personally, on Jno. Culbertson.

Returned same day.

Sheriff's fees, $0.50 c.

(Signed) ARTHUR HART,
Dep'y Sheriff,

98 *Writ of seizure and sale.—Issued 24th November*, 1864.

State of Louisiana, sixth district court of New Orleans.

ANTOINE DOLPHINI
vs. } No. 10809.
EUGENE LASERE.

The State of Louisiana to the sheriff of the parish of Orleans, greeting:

You are hereby commanded, in the name of the State of Louisiana, and of the sixth district court of New Orleans, to seize and sell, after

the legal advertisements, and according to law, for cash, to pay and satisfy plaintiff's claim, viz: 1st, two thousand and fifty-two $\frac{45}{100}$ dollars; 2d, the interest thereon at 8 per centum per annum from the 10th*n* 13th of May, 1862, until paid; 3d, five per centum for lawyer's fees on the amount sued for; and, 4th, all the costs:

A lot of ground, with the buildings and improvements thereon, situate in the first district of this city, in the square bounded by Carondelet, St. Charles, Common, and Canal streets, and designated as lot No. eleven, the said lot having, in American measure, twenty feet three inches and six lines front on Common street, fifteen feet in width in the rear, by a depth of eighty-five feet on one side, and eighty-seven feet on the other.

99 And what you do in the premises you make return thereof, together with this writ, to our said court as the law directs.

Witness the Honorable R. K. Howell, judge of our said court, this 24th day of November in the year of our Lord one thousand eight hundred and sixty , and in the eighty-eighth year of the Independence of the United States.

[L. S.] (Signed) E. H. LEHMANN,
Dep'y Clerk.

Sheriff's return.—Filed May 3rd, 1864.

Received, November 24th, 1863. Seized, advertized, and sold property, as seized, advertized, and sold, in the case of Eugene Rochereau and Co. vs. this defendant, under writ of seizure, No. 10804 of the docket of this honorable court. (See return on this last writ.)

Returned May 2nd, 1864.

MICHEL DE ARMAS,
Dep'y Sheriff.

Amount of claim	$2,052 45
8% interest thereon from the 10th May, 1862, to the 11th January, 1864, (day of sale,) 1 year and 246 days	276 40
5% atty's fees	102 60
	$2,431 45

100 *Advertisements annexed to return.*

EUGENE ROCHEREAU AND CO.
vs.
EUGENE LASÈRE,
AND
ANTONIO DOLPHINI
vs.
THE SAME.
} No.'s 10804 and 10809.

Sixth district court of New Orleans.

By virtue of two writs of seizure and sale, to me directed by the honorable the sixth district court of New Orleans, in the above-entitled cases, I will proceed to sell at public auction, on Monday, January 11th, 1864, at 12 o'clock m., at the Merchants and Auctioneers' Exchange, Royal street, between Canal and Custom-House streets, in the second district of this city:

A lot of ground with the buildings and improvements thereon, situate in the first district of this city, in the square bounded by Carondelet, Common, St. Charles, and Canal streets, and designated as lot No. eleven, on a plan drawn by Hugh Grant, surveyor, on the 11th day of February, 1841, and annexed to an act passed before F. Grima, late a notary public in this city, on the 12th of February, 1841.

Said lot having, in American measure, twenty feet three inches and six lines front on Common street, fifteen feet in width in the rear,
101 by a depth of eighty-five feet on one side, and eighty-seven feet on the other.

The buildings and improvements comprise a three-story brick house, slate-roofed, No. 118 Common street, having one large store or office room, with fire-places on each floor, rear buildings, and now occupied by N. M. Binachi, esq're, consul of Gre'ce.

Being the same property which the defendant acquired by purchase from L. Spengenberg, per act passed before Theodore Guyol, late a notary public in this city, dated July 20th, 1847, seized in the above suits.

TERMS.—Cash on the spot.

JAMES E. DUNHAM,
Sheriff of the Parish of Orleans.

DECEMBER 9, 18, 26, January 2, 11.

EUGENE ROCHEREAU AND CO.
vs.
EUGENE LASÈRE,
et
ANTOINE DOLPHINI
vs.
LE MÊME.
} No's 10804 and 10809.

Sixième cour de district de la Nouvelle Orléans.

En vertu de deux writs de saisie et venta à moi adressés par l'honorable sixième cour de district de la Nouvelle Orleans, dans les affaires ci-dessus, je procéderai le lundi, 11 de janvier, 1864, à midi, á la bourse des négociants et des encanteur rue Royale, entre celles du Canal
102 **et de la Douane, dans la deuxième district de cette ville à l'adjudication de la propriété dont suit la description savoir :**

Un terrain situé dans le premier district de cette ville, dans l'ilet borné par les rues Carondelet, de la Commune, St. Charles, et du Canal, et désigné par le No. onze, suivant plan dressé par Hugh Grant, voyer, le 11 de février, 1841, et annexé à un acte au rapport, de F. Grima, ci-devant notaire public en cette ville, en date du 12 de février, 1841.

Le dit terrain, ayant mesure américaine, vingt pieds trois pouces et six lignes de face à la rue de la Commune, quinze pieds de largeur dans le fond, sur une profondeur de quatre-vingt-cinq pieds d'un côté, et de quatre-vingt-sept pieds de l'autre.

Ensemble, avec les bâtisses et améliorations qui s'y trouvent, consistant en une maison en briques, à deux étages, couverte en ardoises, portant le No. 118 sur la rue de la Commune, ayant au rez-de-chaussée une grande pièce avec foyers, servant de magasin ou de bureau ; même distribution au premier et au second, arrière bâtisses, dépendances, et appartenances louées maintenant à N. M. Binachi, consul grec.

Cette propriété appartient au défendeur, au moyen de l'acquisition

qu'il en à faite de L. Spangenberg, par acte, au rapport de Théodore Guyol, ci-devant notaire public, en cette ville, en date du 20 juillet, 1847.

CONDITIONS.—Comptant au moment de l'adjudication.

JAMES E. DUNHAM,
Sheriff de la Parroisse d'Orleans

Decembre 9, 18, 26; janvier 2, 11.

103 *Notice of demand on defendant annexed to return.*

NEW ORLEANS, *November 24th*, 1863.

ANTOINE DOLPHINI
vs.
EUGENE LASÈRE. } No. 10809.

In the sixth district court of New Orleans.

SHERIFF'S OFFICE OF THE PARISH OF ORLEANS.

To EUGENE LASÈRE:

Take notice, that payment is demanded of you at my office within three days from the service hereof of the amount claimed in the accompanying petition, with interest and cost, and in default of payment within that delay, the property referred to in said petition will be seized and sold according to law.

(Signed) MICHEL DE ARMAS,
Dep'y Sheriff.

Return.

After diligent search and inquiry, I was informed that Eugene Lasère, the defendant herein, has left this city and State without leaving an agent to represent him.

Returned November 28th, 1863.

(Signed) MICHEL DE ARMAS,
Dep'y Sheriff.

104 *Notice of demand on curator ad hoc, annexed to return.—New Orleans, November 30th*, 1863.

ANTONIO DOLPHINI
vs.
EUGÈNE LASÈRE. } No. 10809.

In the sixth district court of New Orleans.

SHERIFF'S OFFICE OF THE PARISH OF ORLEANS.

To EUGENE LASÈRE, (John Culbertson, curator ad hoc:)

Take notice that payment is demanded of you at my office within three days from the service hereof, of the amount claimed in the accompanying petition, with interest and costs; and, in default of payment within that delay, the property referred to in said petition will be seized and sold according to law.

(Signed) MICHEL DE ARMAS,
Dep'y Sheriff.

Return.

On the 30th of November, 1863, I served a copy of this notice of demand and accompanying petition on John Culbertson, esq're, curator ad hoc to defendant herein, personally.

(Signed) ROBERT SWAIN,
Dep'y Sheriff.

105 *Notice of seizure on curator ad hoc annexed.—New Orleans, December 4th,* 1863.

No. 10809. In the sixth district court of New Orleans.

SHERIFF'S OFFICE, PARISH OF ORLEANS.

To EUGÈNE LASÈRE, (John Culbertson, curator ad hoc:)

Take notice that I have seized, and, in three days from the service hereof, shall proceed to advertized and sell according to law the following described property, to wit:

A lot of ground, with the buildings and improvements thereon, situated in the first district of this city, in the square bounded by Carondelet st., Charles, Common, and Canal streets, and designated as lot No. eleven, said square having, in American me'sure, twenty feet three inches and six lines front on Common street, fifteen feet in width in the rear, by a depth of eighty-five feet on one side, and of eighty-seven feet on the other, to pay and satisfy the writ issued in this case, say the sum of $2,052.45, with interest and costs, unless the same is immediately paid.

(Signed) MICHEL DE ARMAS,
Dep'y Sheriff.

Return.

On the 4th day of December, 1863, served a copy of this writ on John Culbertson, esq're, curator ad hoc to defendant herein, personally.

106 Returned same day.

(Signed) ROBERT SWAIN,
Dep'y Sheriff.

State of Louisiana, sixth district court of New Orleans.

I do hereby certify that the above one hundred and five pages do contain a full, true, and complete transcript of all the proceedings had, of all the documents filed, and all the testimony and evidence adduced on the trial of the consolidated cases, wherein Eugène Lasère is plaintiff and Eugène Rocherau et als. are defendants, & Eugène Lasère is plaintiff and Antonio Dolphini is defendant, instituted in this court, the former under the No. 17254, and the latter under the number 17255, of the docket thereof.

In testimony whereof I have hereunto set my hand and affixed the seal of the said court, at the city of New Orleans, on this seventeenth day of January, in the year of our Lord one thousand eight hundred and sixty-seven, and in the ninety-first year of the Independence of the United States.

(Signed) D. LAIZE,
Dep'y Clerk.

107 Supreme court of Louisiana.

Extract from the docket.—November 25th, 1867.

Called. Fixed for Tuesday, 17th December, 1867.

Supreme court of Louisiana.

Extract from the minutes.—Tuesday, 17th December, 1867.

EUGÈNE LASÈRE
vs.
EUGÈNE ROCHEREAU ET ALS. } 1145.

EUGÈNE LASÈRE
vs.
DOLPHINI ET ALS. } 1145.

This case was this day called for trial; was argued by A. Voorhies, esq., of counsel for the plaintiff, by C. E. Schmidt, esq., of counsel for the defendants, until 2½ p. m., at which time it was ordered by the court to be continued over to to-morrow, at 11 o'clock a. m.

Supreme court of Louisiana.

Extract from the minutes.—Wednesday, 18th December, 1867.

EUGÈNE LASÈRE
vs.
E. ROCHEREAU ET AL.
SAME
vs.
DOLPHINI ET AL. } 1145.

108 The arguments in these cases were this day resumed by Miles Taylor, esq., of counsel for Dolphini et al., by Albert Voorhees, esq., of counsel for plaintiff, was submitted to the court on the briefs filed by all parties.

Supreme court of Louisiana.

Extract from docket.—November 9th, 1868.

Called. Fixed for November 24th, 1868.

Supreme court of Louisiana.

Extract from the minutes.—Tuesday, November 24th, 1868.

EUGÈNE LASÈRE
vs.
E. ROCHEREAU AND CO. ET ALS.,
AND
EUGÈNE LASÈRE
vs.
DOLPHINI ET ALS. } 1145.

Continued with prefereuce.

DECEMBER 15TH, 1868.—Continued with preference.

JANUARY 19TH, 1869.—Continued with preference.

Supreme court of Louisiana.

Extract from the minutes.—Tuesday, March 23rd, 1869.

109 EUGÈNE LASÈRE
vs.
EUGÈNE ROCHEREAU AND CO. ET ALS.,
AND
EUGÈNE LASÈRE
vs.
A. DOLPHINI. } No. 1145.

This case was called for trial, and the court having heard argument from Albert Voorhies, esq., of counsel for plaintiff and appellant, and C. E. Schmidt, esq., and Miles Taylor, esq., of counsel for defendants and appellees, and took the same under advisement on the papers and the briefs now on file for both parties.

Supreme court of the State of Louisiana.

Extract from the minutes.—Monday, March 29th, 1869.

EUGÈNE LASÈRE
vs.
EUGÈNE ROCHEREAU AND CO. ET ALS.,
AND
EUGÈNE LASÈRE
vs.
ANTOINE DOLPHINI ET AL. } No. 1145.

On appeal from the 6th district court of New Orleans.

It is ordered, adjudged, and decreed that the judgment of the district court be affirmed, with costs.

Mr. Justice Howell recused.

110 *Opinion of the court.*

Supreme court of the State of Louisiana.

CLERK'S OFFICE, *New Orleans, March 29th*, 1869.

EUGENE LASERE
vs.
EUGENE ROCHEREAU AND CO., ET ALS.,
AND
EUGENE LASERE
vs.
ANTOINE DOLPHINI ET AL. } No. 1145.

Appeal from the sixth district court of New Orleans.

Mr. Justice Taliaferro delivered the opinion of the court in the words and figures following, to wit:

The plaintiff sues to annul a sale made via executiva under the following circumstances: After the taking of New Orleans by the national

forces, in the spring of 1862, the plaintiff, being what was termed "a registered enemy of the United States," and a resident of the city, received a military order, dated May 9th, 1863, to leave the parish for the so-called confederacy before the 15th of that month. In conformity with this order, it seems, from the evidence, that he went to Mobile about the end of the month of May, 1863, where he continued to
111 reside until that city was captured, in April, 1865, at which time he returned to New Orleans. About six months after his departure from New Orleans, in 1863, the defendants, being mortgage-creditors of the plaintiff by acts importing confession of judgment, obtained orders of seizure and sale against the mortgaged property, consisting of a house and lot, situated in the central part of the city, and after the usual process the property was sold.

A curator ad hoc was appointed to represent Lasere as an absentee, the same person, an attorney at law, acting as curator ad hoc in both cases.

In November, 1865, the plaintiff, Lasere, instituted this suit against the defendants, to annul the sale of his property in his absence, on the ground that he was not an absentee by legal intendment; that his status was that of a resident of New Orleans; that he had no other domicil, and that he constantly had the purpose of returning during his temporary absence.

The purchaser of the property was made a party to the suit, and he in turn called the seizing creditors in warranty. Judgment was rendered in favor of the defendants, and the plaintiff has appealed.

The prominent question in the case is, did the facts and circumstances existing at the time the proceedings via executiva were taken, legally warrant the appointment of a curator ad hoc? The argument in behalf of the plaintiff is two-fold. First, that his temporary absence by military compulsion did not affect his residence, and, having a
112 residence, and his absence being temporary, a curator ad hoc coul t not be legally appointed to represent him. Again, that if Lasere, exiled as a registered enemy, became a resident in the insurgent State of Alabama, then the jurisdiction of the sixth district court was suspended as to him. He could neither sue nor be sued in that court if there be any efficacy in the congressional prohibition.

Conceding that, at the time in contemplation, a person not having a domicil in New Orleans, but resident in one of the insurgent States, and owning property and having creditors in New Orleans, could not be proceeded against by them under the ruling in the Alexander case, and according to the other authorities cited by plaintiff's counsel, because such person would have had no status in the courts of New Orleans, and could not have been either plaintiff or defendant, does it follow that another person, having a domicil in New Orleans, but who left that domicil and took up his residence in one of the insurgent States, acquires the same immunity from legal proceedings?

His situation would seem to be different from that of the person first supposed. In the one case the immunity arises solely from the operation of rules regulating the condition of war. In the other it proceeds from the act of the individual himself.

But it is said that, in the case of the plaintiff, the absence was compulsory, and yet it appears that his expulsion from the place of
113 his domicil was superinduced by his own voluntary assumption of the status of a registered enemy of the United States, so that, primarily, his removal was the result of the exercise of his own will. There existed no necessity for his absence antecedent to this exercise of his own volition. During his residence in New Orleans, and before this

voluntary change of his condition, the plaintiff was under the protection of the laws then in force in the city. The courts were open and legal proceedings going on. He might have occupied the position of plaintiff or defendant in these courts. He was present, and the right of his creditors to enforce the performance of his obligations to them might have been exercised at any time.

Can we say that it was in his power to deprive his creditors of that right altogether, or to suspend indefinitely its exercise by voluntarily assuming the character of a public enemy, and taking up his residence in an insurrectionary State? We cannot so conclude?

But the other branch of the argument seems more confidently relied upon, namely, that he had a domicil in New Orleans, which was never changed, and therefore that he was not an absentee, and article 3522, paragraph 3d, is referred to. We think a fair interpretation of this article does not sustain the broad ground assumed in argument, which, in substance, is that, so long as a domicil continues, representation by a curator ad hoc is excluded.

114 This doctrine would lead to consequences plainly unreasonable and repugnant to the fitness and propriety of things. By the statute of 1855, it is provided that "a voluntary absence from the State for two years, or the acquisition of residence in any other State of this Union or elsewhere, shall forfeit a residence within this State."

A debtor, then, leaving property in this State, could defy the pursuit of his creditors for that length of time by absenting himself, taking care to leave behind him no agent to represent him, and no person upon whom a citation could be served. The settled jurisprudence of the State ignores the toleration of such an anomaly in the process of the enforcement of the rights of creditors.

In the early case, reported in 6th New Series, p. 15, this court commented in decided terms against the admission of such a doctrine, and sustained the appointment of a curator ad hoc to represent Mr. Livingstone then at the seat of Government of the United States, in attending to his duties as a member of Congress, on the ground that he had left no one to represent him in his absence.

Our immediate predecessors had occasion in the case of Samory vs. Montgomery, 19th Ann., p. 333, to review at some length this much-vexed question of the appointment of a curator ad hoc to represent persons absent from the State, and that after an elaborate and exhaustive argument by eminent counsel on each side.

115 The views expressed by the court in that case are entirely in unison with that referred to in 6th N. Series, and the general current of decisions since that time. In the case of Samory vs. Montgomery, the court remarked:

"If the term absentee can only be applied to persons who never had a domicil in the State, or who, having had a domicil in the State, has left it permanently, and lives permanently beyond its limits, it is plain that such a construction of the term would operate injurious and vexatious delays to creditors seeking to enforce claims against their debtors. On the other hand, not every casual and temporary excursion of a resident from the State can convert him into an absentee, and render him liable to be har'assed by his creditors, who, to gratify improper feelings, might resort to unnecessary acts to injure him.

"But when, in a case like the present, the debtor is absent two or three years; has property in the State, but who leaves no housekeeper or person upon whom a citation can be served; has no agent to represent him, it would be leaving him a large margin for the procrastination of payment of his debts, to permit him, under such circumstances,

to plead that he had a domicil in the State, and argue his right to personal citation, when for so long a period he was absent, and had left no person upon whom a citation could be served.

"We think such a perversion of terms inadmissible. That the appointment of a curator ad hoc in a case like the present, is clearly
116 within the scope and intendment of our law, there can be no doubt. Neither is it in conflict with the spirit of our jurisprudence."

The facts in the case before us are, as we have seen, that Lasère, the plaintiff, left New Orleans about the last of May, 1863, went to Mobile and there resided until April, 1865, a period of near two years; that he left no housekeeper nor representative of any kind in New Orleans upon whom process could be served.

His notes, secured by mortgage, were due 17th February, 1863. It was not until the 24th of November, of that year, that his creditors instituted proceedings against him. These proceedings throughout seem to have been regular. It is not alleged that fraud or undue means were resorted to by the creditors to obtain an advantage over their debtor during his absence. It is averred that the property sold was worth eighteen thousand dollars, and brought only six thousand and fifty dollars.

There is no evidence that there was a sacrifice of the property. The creditors were not purchasers, and desired no benefit from the sale beyond that of realizing their debts. It was not their fault, if, owing to the existence of war, there was a depression in the value of property.

In the case of Samory vs. Montgomery, quoted above, the proceedings were via. ordinaria. It is, in most of its features, similar to the present case, from which it differs chiefly in this, that the case before us partakes more of the character of a proceeding in rem.

117 Applying the principles to which we have adverted, to the facts of the case at bar, we conclude that the appointment of a curator ad hoc was legal and regular.

It is therefore ordered, adjudged, and decreed, that the judgment of the district court be affirmed with costs.

Supreme court of the State of La.

Petition for rehearing.—Filed April 5th, 1869.

The appellant respectfully prays for a rehearing upon the grounds fully set forth in the brief, which he is now preparing to submit to this honorable court.

(Signed) A. AND M. VOORHIES,
For Appellant.

Extract from docket.—April 12th, 1869.

Filing 6 briefs on application for rehearing.

Supreme court of La.

Extract from the minutes.—Monday, April 26th, 1869.

EUGÈNE LASÈRE
vs.
E. ROCHEREAU AND CO. ET AL.,
AND
EUGÈNE LASÈRE
vs.
DOLPHINI ET AL.
} No. 1145.

It is ordered that the rehearing applied for in this case be refused.

118 *Certificate.*

UNITED STATES OF AMERICA,
Supreme Court of the State of La.:

I, M. P. Julien, dep'y clerk of the supreme court of the State of Louisiana, do hereby certify that the foregoing one hundred and seventeen pages contain a true copy of the transcript of the proceedings had in this sixth district court of New Orleans in a certain suit wherein Eugène Lasère was plaintiff and E. Rochereau and Co. et als. and Antoine Dolphini et al. were defendants, and also of the proceedings had in this supreme court on the appeal taken by said Eugène Lasère, which appeal is now on the files thereof under No. 1145.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at the city of New Orleans, this eighth day of April, one thousand eight hundred and seventy-one, and in the ninety-fifth year of the Independence of the United States of America.

[SEAL.] M. P. JULIAN,
Dep'y Clerk.

119 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the supreme court of Louisiana, and holding sessions in New Orleans, greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court, before you, or one of you, being the highest court of law or equity of the said State in which a decision could be had in the said suits between Eugene Lasère, plaintiff and appellant, and Eugène Rochereau, Albin Rochereau, W'm T. Hepp, Mrs. C. Bullitt, A. Dolphini, and Cuthbert Bullitt, defendants & appellees, wherein was drawn in question a right under the Constitution and laws of the United States, & an authority exercised under the same, & an exemption under the Constitution & laws, & an authority under the same, & the decision was contrary thereto, a manifest error hath happened to the great damage of the said Eugene Lasère, as by his complaint appears:

We, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the first Monday of December next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Salmon P. Chase, Chief Justice of the said Supreme Court of the United States, this 12th day of June, in the year of our Lord one thousand eight hundred and seventy-one.

[SEAL.] D. URBAN,
Clerk of the United States Circuit Court for the District of Louisiana.

120 (Indorsed:) United States circuit court. No. . Eugene Lasère, plaintiff in error, versus Eugene Rochereau & others, defendants in error. Writ of error.

This writ of error is allowed. June 14th, 1871.

JOSEPH P. BRADLEY,
Associate Justice Sup. Court U. S.

Filed June 19th, 1871.

M. P. JULIAN,
Dep'y Clk, Sup. Court State of La.

121 THE UNITED STATES OF AMERICA,
District of Louisiana:

The President of the United States to Eugene Rochereau, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the city of Washington, on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the supreme court of Louisiana, wherein Eugene Lasère is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, this 12th day of June, in the year of our Lord one thousand eight hundred and seventy-one.

JOSEPH P. BRADLEY,
Associate Justice Sup. C't U. S.

122 (Indorsed:) United States circuit court. To Eugene Rochereau. No. . Eugene Lasère, pl'ff in error, vs. Eugene Rochereau & others, def'ts in error. Citation.

Marshal's return.

Received, Jun. 19, 1871, by the U. S. marshal, and, on the 27th of June, 1871, served a copy of this citation on Eugene Rochereau, by handing it to C. E. Schmidt, attorney for said Rochereau, in person, in this city.

S. W. REED,
D'y U. S. Marshal.

JUNE 27TH, '71.

On this 27th day of June, 1871, personally appeared before me the subscriber, S. W. Reed, and makes oath that *a* delivered a copy of the within citation as stated in his official return hereon.

S. W. REED.

Sworn & subscribed before me.

F. B. VINOT,
D'y Clk U. S. Circuit Court.

123 THE UNITED STATES OF AMERICA,
District of Louisiana:

The President of the United States to Albin Rochereau, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the city of Washington, on the first Monday of December next, pursuant to a writ of error, filed in the clerk's office of the supreme court of Louisiana, wherein Eugene Lasere is plaintiff in error, and you are defendant in error, to show

cause, if any there be, why the judgment rendered against the said plaintiff in error, as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, this 12th day of June, in the year of our Lord one thousand eight hundred and seventy-one.

JOSEPH P. BRADLEY,
Associate Justice Sup. C't U. S.

124 (Indorsed:) United States circuit court to Albin Rochereau. No. . Eugene Lasere, pl'ff in error, vs. Eugene Rochereau & others, def'ts in error. Citation.

Marshal's return.

Received, Jun' 19, 187', by the U. S. marshal, and, on the 27th of June, 1871, served a copy of this citation on Albin Rochereau, by handing it to C. E. Schmidt, his attorney, in person, in this city, the said Rochereau being absent from the State at the time of said service.

S. W. REED,
D'y U. S. Marshal.

JUNE 27, '71.

On this 27th day of June, 1871, personally appeared the subscriber, S. W. Reed, & makes oath that he delivered a copy of the within citation, as stated in his official return hereon.

S. W. REED.

Sworn & subscribed before me.

F. B. VINOT,
D'y Cl'k U. S. Circuit Court.

125 THE UNITED STATES OF AMERICA,
District of Louisiana:

The President of the United States to William T. Hepp, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the city of Washington, on the first Monday of December next, pursuant to a writ of error, filed in the clerk's office of the supreme court of Louisiana, wherein Eugene Lasere is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, this 12th day of June, in the year of our Lord one thousand eight hundred and seventy-one.

JOSEPH P. BRADLEY,
Associate Justice Sup. C't U. S.

126 (Indorsed:) United States circuit court. W'm T. Hepp. No. . Eugene Lasere, pl'ff in error, vs. Eug. Rochereau & others, defendants in error. Citation.

Marshal's return.

Received, Jun' 19, 187', by the U. S. marshal, and, on the 27th of June, 1871, served a copy hereof on W'm T. Hepp, by handing the same to C. E. Schmidt, his att'y, in person, in this city.

S. W. REED,
D'y U. S. Marshal.

JUNE 27, '71.

On this 27th day of June, 1871, personally appeared before me the subscriber, S. W. Reed, and makes oath that *a* delivered a copy of the within citation, as stated in his official return hereon.

S. W. REED.

Sworn & subscribed before me.

F. B. VINOT,
D'y Cl'k U. S. Circuit Court.

127 THE UNITED STATES OF AMERICA,
District of Louisiana:

The President of the United States to Mrs. Eliza White, wife of Cuthbert Bullitt, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the city of Washington, on the first Monday of December next, pursuant to a writ of error, filed in the clerk's office of the supreme court of Louisiana, wherein Eugene Lasere is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, this 12th day of June, in the year of our Lord one thousand eight hundred and seventy-one.

JOSEPH P. BRADLEY,
Associate Justice Sup. C't U. S.

128 (Indorsed:) United States circuit court. Mrs. Bullitt. No. . Eugene Lasere, pl'ff in error, vs. Eug. Rochereau & others, def'ts in error. Citation.

Marshal's return.

Received, Jun' 19, 1871, by the U. S. marshal, and, on the 27th of June, 1871, served a copy of this citation on Mrs. Bullitt, by handing it to Miles Taylor, esq., her attorney, in person, in this city, the said Mrs. Bullitt being absent from the State at the time of said service.

S. W. REED,
D'y U. S. Marshal.

JUNE 27, '71.

On this 27th day of June, 1871, personally appeared the subscriber, S. W. Reed, and makes oath that he delivered a copy of the within citation, as stated in his official return hereon.

S. W. REED.

Sworn & subscribed before me.

F. B. VINOT,
D'y Cl'k U. S. Circuit Court.

129 THE UNITED STATES OF AMERICA,
Distrtct of Louisiana:

The President of the United States to Cuthbert Bullitt, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the city of Washington, on the first Monday of December next, pursuant to a writ of error, filed in the clerk's office of the supreme court of Louisiana, wherein Eugene Lasere is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, this 12th day of June, in the year of our Lord one thousand eight hundred and seventy-one.

JOSEPH P. BRADLEY,
Associate Justice Sup. C't U. S.

130 (Indorsed:) United States circuit court. Cuthbert Bullitt. No. . Eugene Lasere, pl'ff in error, vs. Eug. Rochereau & others, def'ts in error. Citation.

Marshal's return.

Received, Jun' 19, 1871, by the U. S. marshal, and, on the 27th of June, 1871, served Cuthbert Bullitt, by handing a copy of this citation to Miles Taylor, esq., his attorney, in this city, the said Bullitt being absent from the State at the time of said service.

S. W. REED,
D'y U. S. Marshal.

JUNE 27, '71.

On this 27th day of June, 1871, personally appeared the subscriber, S. W. Reed, & makes oath that he delivered a copy of the within citation, as stated in his official return hereon.

S. W. REED.

Sworn & subscribed before me.

F. B. VINOT,
D'y Clk U. S. Circuit Court.

131 THE UNITED STATES OF AMERICA,
District of Louisiana:

The President of the United States to Antoine Dolphini, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the city of Washington, on the first Monday of December next, pursuant to a writ of error, filed in the clerk's office of the supreme court of Louisiana, wherein Eugene Lasere is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, this 12th day of June, in the year of our Lord one thousand eight hundred and seventy-one.

JOSEPH P. BRADLEY,
Associate Justice Sup. C't U. S.

132 (Indorsed:) United States circuit court. A. Dolphini. No. . Eugene Lasere, pl'ff in error, vs. Eug. Rochereau & others, def'ts in error. Citation.

Marshal's return.

Received, Jun' 19, 1871, by the U. S. marshal, and, on the 27th of June, 1871, served a copy of this citation on A. Dolphini, by handing it to C. E. Schmidt, his att'y, in person, in this city, the said Dolphini being absent from the city & State at the time.

S. W. REED,
D'y U. S. Marshal.

JUNE 27, '71.

On this 27th day of June, 1871, personally appeared the subscriber, S. W. Reed, and makes oath that he delivered a copy of the within citation, as stated in his official return hereon.

S. W. REED.

Sworn to & subscribed before me.

F. B. VINOT,
D'y Clk U. S. Circuit Court.

133 Know all men by these presents that we, Eugene Lasere, as principal, and Emile John O'Brien, as surity, are held and firmly bound unto Eugene Rochereau, Albin Rochereau, William T. Hepp, Mrs. Eliza White, wife of Cuthbert Bullitt; Cuthbert Bullitt, & A. Dolphini, in the full and just sum of five hundred dollars, to be paid to the said Eugene Rochereau, Albin Rochereau, W'm T. Hepp, Mrs. Bullitt, Cuthbert Bullitt, & A. Dolphini, certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents, sealed with our seals, and dated this 12th day of June, in the year of our Lord one thousand eight hundred and seventy-one.

Whereas, lately, at a supreme court of Louisiana, holding sessions in the city of New Orleans, in two suits depending in said supreme court, wherein Eugene Lasere is plaintiff and appellant, and the said Eugene Rochereau and others, are defendants and appellees, judgment was rendered against the said Eugene Lasere, plaintiff & appellant, and the said Eugene Lasere having obtained a writ of error, and filed a copy thereof in the clerk's office of the said supreme court to reverse the judgment in the aforesaid suits, and a citation directed to the said Eugene Rochereau, Albin Rochereau, W'm T. Hepp, Mrs. Cuthbert Bullitt, & C. Bullitt, & A. Dolphini, citing and admonishing them to be and appear at a Supreme Court of the United States, to be holden at Washington, the first Monday of December next:

Now, the condition of the above obligation is such, that if the said Eugene Lasere shall prosecute his writ to effect, and answer all damages and costs if he fail to make his plea good, then the above obligation to be void; else to remain in full force and virtue.

EUGENE LASERE. [L. S.]
EMILE J. O'BRIEN. [L. S.]

Sealed and delivered in the presence of—
F. B. VINOT.

134 (Indorsed) United States circuit court. No. . Eugene Lasere vs. Eugene Rochereau & others. Bond for writ of error. Filed June 19th, 1871. M. P. Julian, dep'y clerk sup. court State of La.

Approved June 14th, 1871.

JOS. P. BRADLEY,
Associate Justice Sup. C't U. S.

(Indorsement on cover:) No. 549. Eugene Lasere, plaintiff in error, vs. Eugene Rochereau, Albin Rochereau, W'm T. Hepp, Mrs. C. Bullitt, A. Dolphini, and Cuthbert Bullitt. Louisiana sup. court. Filed 18th December, 1871.

Supreme Court of United States

October Term, 1873.

No. 92.

EUGENE LASÈRE

vs.

ROCHEREAU, *et al.*

Error to the Supreme Court of Louisiana.

THE PLEADINGS AND PROCEEDINGS.

The plaintiff (Lasère) commenced two suits in the 6th District Court of New Orleans, in November, 1865, against different parties to set aside two judgments in that Court, and the proceedings under them, which judgments had been recovered against him at the same time, and under similar conditions of legal facts. There were answers to his petitions of the same import, and the cases were heard together, and judgments were given against him for the defendants. Rec. pp. 21, 22, 23. There was an appeal to the Supreme Court, and by agreement, only a record of one case was made, as the two "were identical" and the cases were to be treated in "the Supreme Court as if they had been consolidated and cumulated." Rec. p. 28.

The numbers of the two cases are preserved, and the name of each, but only one judgment, applying to both, was rendered in the Supreme Court. The judgments of the District Court were affirmed in the Supreme Court (Rec. pp. 50, 51, 52,) with the reasons of the judgment.

The petition of the plaintiff affirms that the Court had no authority to make him a party to the proceedings in the original judgments and that there was a want of jurisdiction, and there was illegality. Rec. 1. The answers deny this, and affirm the validity of the proceedings. Rochereau's ans., p. 5.

THE CASE STATED.

The matter of the controversy is, that the plaintiff, Lasère, prior to the 9th May, 1863, had been for "many years domiciliated in the City of New Orleans, where he had been the Clerk of the Supreme Court of the State." On the 9th day of May, 1863, he was notified by order of the Provost Marshal General of the Department of the Gulf, in New Orleans, that being "a registered enemy of the United States, under Order No. 35," he must leave the parish for the "so-called Confederacy" before the 15th inst.; that transportation was ready to convey him across the lake to designated places in Mississippi; that he could carry his wearing apparel in actual use; necessary bedding for personal use; and ten days rations.

Thus he became an exile and remained so till in 1865. Rec. 22, 23. Shortly after the opening of the Courts, at the end of the summer and fall vacation of 1863, proceedings by executory process were commenced by the creditors of the plaintiff upon two mortgages, for the seizure and sale of a house and lot in the City of New Orleans. Their petition was that it might be seized and sold for the payment of the debt. The petition and the mortgages describe the plaintiff (Lasère) as residing in the city.

The order was granted *ex parte* upon the petition and the production of the mortgage. The next and a necessary stage in the proceedings is a notice to the debtor of the issue of the process and to require a payment of the debt. The object being to enable the debtor either to avoid the proceedings by opposition, or to pay the money. Without such a notice the proceedings are null.

C. Prac. La., Arts. 605, 608, 612, 735.
5 La. Ann. R., 219.
10 La. R., 269.
11 Rob., 37, 77.
16 La. R., 596.

A notice was issued, and was returned by the Sheriff, that the defendant (Lasère) could not be found, and that he had been informed he had left the parish and State without leaving an agent to represent him. Rec. 32. Thereupon, the Court, on motion of the plaintiff's attorney, appointed a *curator ad hoc*, upon whom the demand was made. There is no testimony of any interference by the curator in the cause. He received a notice but we do not see that he made any inquiry, any appearance, or corresponded with the absentee, or attempted to inform him of what was going on. The sale was made the 11th January, 1864, one of the defendants being the purchaser.

The object of this suit was to annul the orders for seizure and sale, and the sale made under these orders.

The District Court dismissed this petition and the reasons for the judgment are in the Record, p. 24. It appears on the face of that opinion that the plaintiff contended that the District Court was not competent to call him before it by appointing a *curator ad hoc*, because, he was at the time within the lines of the Confederate States by the sentence and act of the military authorities at New Orleans. The Judge sustained the jurisdiction of

that Court in the cause and decided that the appointment of the curator was legal and regular. Upon a motion to set aside this judgment, the plaintiff assigned as his third ground of objection: "That the *status* of the plaintiff at the institution and consummation of these proceedings sought to be annulled, being that of an inhabitant of an insurrectionary district, so declared by Congress, he, the said plaintiff was disqualified and incapacitated by law to appear in this Court, either in the capacity of plaintiff, defendant, or intervenor, without reference to his individual *status* of loyalty or non-loyalty." Rec. 26. The Supreme Court, upon appeal, discussed the question at large and affirmed the judgment of the District Court.

ASSIGNMENT OF ERRORS.

We assign for error: That it being manifest upon the record, that the plaintiff was a citizen and resident of Louisiana, and the parish of Orleans, prior to, and on the 9th May, 1863, having no connection with the military service of the United States, was commanded by the Provost Marshal General, to depart from New Orleans, and to go into the "so-called Confederacy," and that transportation was ready for the purpose of conveying him. And, in submission to that command, he was, from the month of May, 1863, until 1865, an involuntary sojourner in that hostile territory; that, during his abode in that territory, he was deprived, by the laws of the United States, of the faculty of correspondence, communication, intercourse or dealings with the inhabitants of New Orleans, of suing, impleading or answering in the Courts in that city, or of landing upon any place within it; that he could not appoint an agent or an attorney to represent him, nor act for himself. Wherefore, and in consequence of this incapacity, the 6th District Court of New Orleans was not authorized to take cognizance of the suits and to authorize the proceedings in them of which he complains; and that the

Supreme Court of Louisiana erred in its judgment to the contrary.

He further assigns for error, that the Supreme Court overruled his objections to the jurisdiction of the said 6th District Court in those cases as set forth in his petition, (Rec. p. 1,) and his grounds for a new trial. Rec. p. 26.

BRIEF.

It is not denied that an action of nullity is a proper action under the Code of practice of Louisiana to obtain the relief sought for; neither is it affirmed that a legal notice was not required to be given to the plaintiff of the seizure, and that a nullity would not result from a failure. The District and the Supreme Court assert that the *necessary* notice was given to the *curator ad hoc*, and that the defendant in the process was brought within the authority and jurisdiction of the Court by the appointment of a curator, and that upon the service of the notice of sale upon him, the case came properly under the cognizance of the Court. We deny the accuracy of the conclusion and aver that by the *transportation* of the plaintiff to the "Confederacy," according to the military orders, the local tribunals of New Orleans ceased to have jurisdiction of the person of the plaintiff, and of a controversy for or against him. The political condition of New Orleans is matter of public history, and is readily found in authentic documents. The capture of the city was complete the 1st May, 1862; the port was opened the 1st June, 1862.

12 Stat., 1263.

The Venice, 2 Wall., 135, 256.

About the end of the summer of 1862, a series of orders was published by the Department Commander which have been the subject of much observation, and which seem to have been issued in accordance with a plan. The alien population were

called to an account of their sentiments and sympathies and the state of their property and connections. Another order called upon the native population for a similar revelation, and those who confessed to confederate sympathies were registered as enemies. A Domesday book was made up of the property of this class of persons, and one order placed one of the neighboring parishes under sequestration. Orders appointing a Military Governor and establishing the predominance as law the military code, were published and some tolerance of the civil tribunals was made, but as subordinate to the military authority. We refer to General Butler in New Orleans, pp. 449, 469, 473; 5 Rebellion Records, 80-86; 6 Rebellion Records, doc. 41, p. 190, for the details see Appendix. The apologist of the orders and acts of this Commander, to whose book we refer, admires his rule of the "iron hand" at New Orleans, and glorifies his success. Another judgment upon the mis-rule of New Orleans during his term and of its success might be, that there

"Six months taste of apportioned insolence
Cruelty graduated, dose by dose
Of ruffianism dealt out at bed and board,
And lo! his work was done, claqueurs clapped hands."

The President of the United States removed the Commander in November, 1862; he directed the organization of a Provisional Court with civil and criminal jurisdiction, (23d of October, 1862,)* 6 Rebellion Records, p. 24; and in January, 1863, he published his proclamation emancipating slaves, and designated anew the metes and bounds of the insurrection. In this proclamation the parish of Orleans and twelve other parishes of Louisiana were excluded from the insurrectionary limits and were recognized as loyal territory. 12 Stats., 1264–1268. This proclamation was made pursuant to an Act of Congress and has the authority of law. A similar recognition was made in March, 1863.

The Venice, 2 Wall., 256.

* The District and Circuit Courts of the United States opened in June, 1863.

In April and May, 1863, orders for the perfection of the work marked out in 1862, were issued, and which will be found in the Appendix to this brief, and document A, of the record, p. 22. These are the orders of banishment. The plaintiff was an old citizen of New Orleans, and had been for years Clerk of the Supreme Court of the State. This implies that he was honorable, courteous, pacific, trust-worthy. There is no charge of wrong or wicked lewdness, or of violation of law or statute against him. He had not borne arms, made riots, nor did he leave the city, in April, 1862, to avoid capture. He was entitled to protection of person and property. There was no indictment, prosecution, trial. Nothing is said against him, except that he stood on the books under order 35 as a registered enemy. For this he was banished to the so-called Confederacy, with nothing but apparel, bed and ten days' rations. The order inflicts punishment. It compels a separation from home, connections, pursuits, property. Personal discomfort and personal suffering are contemplated. The plaintiff was sent to another State against his will, and to a hostile territory designated by the Military Commander—not by himself.

Had this order been embodied in an Act of Congress, and applied to the plaintiff under all the circumstances existing the 9th May, 1863, it could not be supported, because unconstitutional. It would have been an act of attainder. Neither at that time, nor at any time before or since in the history of this country, has there been any Court authorized to pass such a sentence. "No man shall be exiled or banished out of his country; that is *nemo perdet patriam*. No man shall lose his country unless he be exiled according to the law of the land." 2d Co. Iust., 46; 4th Jeremy Bentham's Works, 278. There had been no statute of the United States, nor of any State, which imposed *deportation* with leave to carry apparel in use, a necessary bed, and ten days' rations, as a punishment for any crime or any misdemeanor. We are not aware of any law or statute which calls for registration of a man's political opinions or notions of public duty at the behest either of a military or civil officer. This sort of inquisition seems to have originated in this country in the scheming intellect of the Commander of the Department in 1862.

the rectitude of this command and look upon it with a measure of complacency. They seem to impute blame to the plaintiff for failing to deprecate the wrath of these officials by some compliance. Suppose that he might have appeased the Provost-men, as St. Paul might have been loosed from his bonds, by conforming to the hopes of Felix; or suppose there were other gratifications which if employed, might have caused a revocation of the order, the question still comes who gave to the Provost Marshal lawful authority to issue this command? The command was obeyed. From the month of May, 1863, the plaintiff was in the so-called Confederacy by this exercise of superior force. Before this the 6th District Court might have summoned him to appear and plead, and its officers might have demanded payment and granted discharges from the power of the process to him. After he was landed upon the soil of the "so-called Confederacy," the conditions were altered. He was under a civil excommunication. No man in New Orleans who performed his civil duty or valued his personal security, could correspond, communicate, or hold intercourse with him. The plaintiff could neither borrow nor lend money, nor perform a debt or duty in New Orleans. Semmes vs. Hartford Co., 13 Wall., 158. His incapacity to make or to perform contracts was absolute. Montgomery vs. United States, 15 Wall., 439–58. He could not appoint an agent or an attorney.

U. S. vs. Grossmayer, 9 W., 72; 7 Wall., 542.

The State statutes of prescription and limitation were suspended between parties living in New Orleans and those living in the Confederacy, for the reason that they had no access to the Courts where suits could be commenced. 6 Wall., 521. Nor could any officer, except the President of the United States, authorize the restoration of intercourse between those districts.

8 Wall., 163, 185; 6 Wall., 521.

The territory to which the plaintiff was banished was blockaded by sea, and besieged by land. None could legally enter into that territory or depart from it, without a license from the officers of the Government of the United States.

This executory *process* was issued some six months after the departure of the plaintiff from the Parish and State. The Court seems to have existed under the orders of the military Governor of the City. 12 Wall., 174. His Code consisted of the laws of the United States, the orders of the military commander and such statutes of Louisiana that were not inconsistent therewith.

The Court was for an occasional and temporary purpose to aid the military authority, and upon general principles the jurisdiction would be limited to the persons belonging to the military command, or who were within the reach of the physical power of the commander. His jurisdiction did not extend to persons beyond his domain.

The plaintiff was not within the domain of the commander or the Court. But had been *transported* from that domain to one over which neither the commander nor the Court had power to have any civil or commercial intercourse. The clearest act of amity and of intercourse which nations perform consist in the free admission of their respective citizens to the protection of their judicial tribunals. The direct effect of war is to close the Courts against the members of a hostile belligerant nations.

The United States have carried this rule to the utmost limit in their statutes and jurisprudence as respects the inhabitants of the "so-called Confederacy." It is clear that the plaintiff was not within the jurisdiction of the 6th District Court.

The adverse judgments upon his petition affirm that he came before the Court by the appointment of the *curator ad hoc.* We contend this was nugatory. What was the duty of this curator? He was to correspond with the plaintiff, inform him of the pendency of the suit, and assist in the defence or to give place to him that he might defend in his own person.

C. C., Art. G. P.

It is clear that this curator was not able to perform a single act for the plaintiff. He could not correspond or communicate with nor receive money from his principal to pay the demand, nor advance the money for him with safety.

The Codes of Louisiana have made these provisions to secure to the absentee the means of defence, to bring home to the defendant full knowledge of the litigation, and their purpose and spirit are perverted by a use of those Codes in the manner set forth in this Record. Those Codes adopt in all their breadth the doctrines of universal jurisprudence, which appear so fully in the discussions of this Court, as to the necessity of notice.

Hollingsworth vs. Barbour, 4 P., 466; 14 H., 334.
McVeigh vs. U. S., 11 Wall., 259; 10 Wall., 367.

The effect of war is to close the Courts of hostile nations to their respective subjects or citizens.

"It is true that an alien enemy shall maintain neither real or personal action, *donec terræ fuerint communes*, that is, until both nations be at peace. Co. Litt., 129 a. In the proclamations of war there is usually a clause granting to resident aliens who shall conduct themselves properly, protection, and there have been laws to provide for licenses and safe conducts. In modern times an alien enemy *resident* in a country is not molested, and has the privileges of an alien friend even without a license. Clarke vs. Morey, 10 John., 70. But the case of a suit against an alien enemy whose domicil is in the hostile territory, being maintained in the English Courts of Common Law or Chancery, cannot be found. There is an obiter in one or two of the decisions of this Court, that although an alien enemy could not sue he might be sued. The citations are Bacon's Abridgement, alien D. Albrecht vs. Sassmon, 2 V. & B., 322. The citation in Bacon comes from the case of Albrecht vs. Sassmon. That suit

was by an alien enemy for discovery and relief in the Chancery Court. The Lord Chancellor dismissed the bill on appeal. Upon the argument, it was said an alien enemy might file a bill of discovery, for he might be sued and so should defend—and should have all means for defence. The Chancellor did not admit this, nor sanction the anonymous exchequer case on which the assertion depended. The annotator of Story discusses the point with intelligence and collects the cases. His opinion is, that to maintain a suit against an alien enemy would be against principle.

Story's Eq. Plead., sec. 53, note, (5 ed.)
32 L. and Eq., 465.

The objection to such a conclusion in a case situated like the present, is irresistible. If a State Court can legally call a public enemy to come before it by process or publication, it follows, the enemy may come upon the call. The Court then may issue a license or a safe conduct for the enemy to sojourn pending the controversy. Suppose that to have been attempted in the present instance, what would have been the consequence? We can only surmise that the defendant and possibly the Judge would very shortly have been "chin deep in a marsh of misery," at Fort Jackson or Fort Pulaski. If there could have been no appearance, the summons must have been nugatory. In this case there was a blockading squadron and a Congressional statute to prevent the plaintiff from any appearance at the Court. The *curator ad hoc* was under a disability to perform the duties of a *curator ad hoc*. The *curator ad hoc*, as his first duty, was to tell his principal of the suit and to invite him to defend it.

The decision of this Court in the case of Dean vs. Nelson, 10 Wall., 158, accords with the doctrines we maintain. Nelson was sent into the Confederacy from Memphis, because some

irregular soldiers committed, as it was charged, some excesses that were not soldierly. Apparently in accordance with military morals and ideas, an innocent man, not connected with the military nor the excesses, was selected for punishment and was punished by banishment. Some time after a judicial tribunal, established by the military at Memphis, advertised, according to the Tennessee Code, for this absentee to come and to answer a bill, or that it would be taken *pro confessis*. He did not come and a decree was pronounced against him. This Court treated this decree as inoperative upon principles that cannot be properly questioned. This defendant was not a party to the suit.

We have referred to the case of Hanger vs. Abbott as illustrating the breadth of the doctrines of this Court, as to the effect of war in closing litigations of a peaceful nature between the inhabitants of belligerent States. This case, and the class of cases to which it belongs, is not without importance in its constitutional connections. The limitation of actions to definite periods of time is a law of the forum, and the power of the State to determine the conditions has never been disputed. The Code of Louisiana, for example, limits an action to recover a bill or note to five years after its maturity. A time of war under the Code is not deducted though the holder of the instrument may not be able to bring a suit. The Supreme Court of the State determined in accordance with the Code. This judgment was reversed in this Court. The Court determined that war was an impediment to a suit between the respective members of the belligerent States; that this impediment resulted from the act of the Government, and that it belonged to the Government to settle and to adjust the effects and consequences of its act upon the members of the States; that, therefore, the acts of limitation in the several States were suspended during the war in reference to parties who could not maintain suits against each other.

Stewart vs. Levy, 11 Wall., 244.

Stewart vs. Kahn, 11 Wall., 493.

It would seem strange that the individuals belonging to States at war should be able to settle suits by appeal to their Courts, while the States themselves were at open war to settle their own disputes.

This power of the separate States to deal with the civil concerns of its members with the members of the hostile States, was productive of inconvenience and difficulty during the revolutionary war of 1776. There were laws requiring payment of debts to British subjects to be made to State officers; there were sequestration and confiscation laws which retarded a settlement at the end of the war; there was a serious conflict between the Government of the United States and the States on this subject; There were anxious and earnest litigation which was terminated by the Supreme Court.

Ware vs. Hylton, 3 Dall., 199.

The case of Ludlow vs. Ramsey, 11 Wall., 581 is not at all contrary to the views we have presented. The case stands upon the facts stated by the Court. A judgment in an attachment suit against an absconding debtor, regular in its form, was introduced as a link in a chain of title in a controversy respecting land. The complainant objected, that he had absconded from his residence to avoid the approaching armies of the United States, and not to delay or defeat his creditors. He had found a refuge in the Confederacy. We are not aware of a case where such an inquiry would have been available for such a purpose.

The case before the Court is that of a person transported to a hostile territory which was under interdict and excommunication—in a state of siege and blockade by the officers of the United States. In that territory he was restrained by public law and congressional statute from intercourse with any person in New Orleans. He could not attend the Court on a summons,

nor confer with an agent, attorney or curator. Congress had placed him under this disability by its enactments, and had engrossed all control over the relations between him and the Government's tribunals and citizens of the United States.

A local tribunal had no jurisdiction over him or his controversies, and could not bring him before it.

J. A. CAMPBELL,
DUNCAN G. CAMPBELL,
Attorneys for Plaintiff.

APPENDIX.

HEADQUARTERS, DEPARTMENT OF THE GULF,
NEW ORLEANS, *Sept* 24, 1862.

GENERAL ORDERS, No. 76.

All persons, male and female, within this department, of the age of 18 years and upwards, who have ever been citizens of the United States, and have not renewed their allegiance before this date to the United States, or who hold now, or pretend any *allegiance* or *sympathy* with the so-called Confederate States, are ordered to report themselves on or before the first day of October, next, to the nearest Provost Marshal with a descriptive list of all their property and rights of property, both real, personal and mixed, made out and signed by themselves, respectively, with the same particularity as for *taxation*. They shall also report their place of residence by number, street, or other proper description, and their occupation. Which registry shall be signed by themselves, and each shall receive a certificate from the Marshal of registration *as claiming to be an enemy of the United States*.

Any person of those described in this order, neglecting to register themselves shall be subject to fine and imprisonment at hard labor, or both, and all his or her property *confiscated* by order as punishment for such neglect.

On the 1st day of October, next, every householder shall return to the Provost Marshal nearest to him, a list of each inmate of his or her house of the age of 18 years and upwards, which list shall contain the following particulars: The name, sex, age and occupation of each inmate, whether a registered alien, or one who has taken the oath of allegiance to the United States, a registered enemy of the United States, or one who has neglected to register himself or herself as either an alien, loyal citizen, or a registered enemy.

All house holders neglecting to make such return, or making a false return shall be punished by fine or imprisonment with hard labor, or both.

Each policeman will, within his beat, be held responsible that every house holder failing to make such return within three days from the 1st of October, is reported to the Provost Marshal, and five dollars for such neglect for every day in which it is not reported will be deducted from such policeman's pay, and he shall be dismissed, and a like sum for conviction of any house holder not making his or her return shall be paid to the policeman reporting such house holder. Every person who shall, in good faith, renew his or her allegiance previous to the 1st day of October next, and shall remain *truly loyal* will be recommended to the President for pardon for his or her previous offenses.

By command of MAJOR GENERAL BUTLER,

GEO. C. STRONG,
Assistant Adjutant General, Chief of Staff.

REGISTERED ENEMIES.

HEADQUARTERS, DEPARTMENT OF THE GULF,
19TH ARMY CORPS, NEW ORLEANS, *April* 27, 1863.

GENERAL ORDERS, No. 35.

Registered enemies of the United States are hereby ordered to leave this Department, on or before the 15th day of May, proximo. The Provost Marshal General is charged with the peremptory execution of this order.

By command of MAJOR GENERAL BANKS,

RICHARD B. IRWIN,
Assistant Adjutant General.

NOTE.—In Louisiana these orders are judicially noticed without proof. 22 La. Ann., 629.

Supreme Court of the United States.

October Term, 1873.

EUGENE LESERE
vs.
E. ROCHEREAU & CO.
No. 92.

Petition for Rehearing.

And now into this honorable court by their counsel, Durant & Horner, comes Cuthbert Bullitt, and his wife, Eliza Bullitt, and respectfully ask for a rehearing of this cause on the following grounds, to wit:

First. That the petitioners were not in the State of Louisiana at the time the judgment of the supreme court of that State was rendered in the cause, and when the writ of error was sued out and served; and that they did not know that such a writ had been issued, or that the case had been removed to this court, and were never personally served with citation in error.

Second. That the petitioners had instructed Miles Taylor, their attorney in New Orleans, who then conducted the cause, in case it should be removed to this court, to place it in the hands of Thomas J. Durant, whom they designated us their attorney here, but Taylor entirely neglected to advertise them of the removal of the cause by

writ of error, and equally neglected to speak to or communicate with T. J. Durant on the subject, who, as well as petitioners, remained entirely ignorant of the existence of the cause on the docket here until the judgment of the court was read in it; and that the said Taylor died unexpectedly in Saratoga, New York, not far from the commencement of this term; by reason of all which they have been deprived of a knowledge that their cause was here to be heard, as well as of the assistance of counsel.

Third. That this court was without jurisdiction in the premises because no Federal question was presented by the record, the case coming up from a State court, and, if such a question be cognizable here, because there was no error in the judgment of the supreme court of Louisiana.

Wherefore petitioners pray that this honorable court will open the judgment heretofore entered at this term, and allow them to be heard and make defence.

They refer to the affidavit of Cuthbert Bullitt, hereto annexed, marked Exhibit C. B., No. 1, and the affidavit of Thomas J. Durant, marked Exhibit C. B., No. 2, which they pray may be taken as a part hereof.

Respectfully submitted.

DURANT & HORNOR,
for Petitioners.

BRIEF OF ARGUMENT.

The counsel of petitioners, in support of their application to procure the judgment to be opened and to be let in to make their defence, respectfully submit that the purposes of justice demand that the prayer of the petitioners should be granted.

It will be seen by reference to pages 57 and 58 of the

transcript that the citations in error in this case were not served on Mr. and Mrs. Bullitt, but on their attorney, Miles Taylor, who failed to inform them of the suing out of the writ. The affidavits of C. Bullitt and T. J. Durant, annexed to petition, in Exhibits C. B., Nos. 1 and 2, show that the petitioners lived out of Louisiana, in Kentucky, when the judgment below was rendered, and that they had no opportunity of being heard here, as the sudden death of Miles Taylor prevented him from doing what he no doubt intended to do, that is, to engage counsel here or appear himself to argue the cause.

Again, we respectfully submit that the court was without jurisdiction in the case. The case was one where Lasere, a person absent from Louisiana by military compulsion, left real property in New Orleans subject to mortgage; the mortgage creditor procured the sale of the property by proceedings *in rem*. On his return to New Orleans Lasere brought suit to recover the property, on the ground that in the mortgage proceedings under which the property had been sold he had not an opportunity to appear and have his day in court. He did not offer to pay the mortgage debt.

The courts of Louisiana decided that the proceedings under the mortgage were valid by the law of Louisiana, and passed a good title to the purchaser at sheriff's sale.

See judgment and opinion of sixth district court of Louisiana, Record, pages 23 and 24.

See judgment and opinion of supreme court of Louisiana, Record, pages 50 to 53.

No Federal question appears in the opinion or proceedings of the supreme court of Louisiana. None appear on the record to have been raised or discussed.

If this view be sustained by the record, as we believe it to be, there is no need of a citation of authorities in its support, as it is in accordance with the long-established jurisprudence that the court is without jurisdiction.

But if the court had jurisdiction of the cause, then we submit there was no error in the judgment of the supreme court of Louisiana.

The original suit of Rochereau *vs.* Lasere was on a mortgage. (See Record, pp. 30 and 31.) The petition was for executory process; an order of seizure and sale against the property itself.

See Record, pp. 29 and 30.

This, under Louisiana law, is a proceeding *in rem*.

See Code of Practice, arts. 61 and 62, 732, 733, 734.

The order of sale is granted by the court on simple inspection of the petition and act of mortgage. No citation to the debtor is required, (C. P., art. 734,) as the proceeding is *in rem*.

A notice is required to the debtor, if in the State. (C. P., 735 and 736.)

If the debtor be absent from the State the judge appoints an attorney, on whom the notice is served. (C. P., 737.)

See Aillet *vs.* Henry, 2 Louisiana Annual, 145.
See Dupuy *vs.* Bemiss, same, 509.
See Broughton *vs.* King, same, 569,

which are decisions illustrating the foregoing articles of the C. P.

See also the case of Denny *vs.* The Judge of the Second District Court, 16th Louisiana Annual, pages 390 and 392, illustrating the practice of the appointment of a *cura-*

tor ad hoc in these hypothecary actions *in rem* in Louisiana.

In this case the law which governed the Lasere contract and formed a part of it was strictly complied with, and he has nothing to complain of.

The proceedings are entirely similar to the *sci. fa. sur mortgage* in the common-law States.

See Wickersham *vs.* Fetrow, 5 Pennsylvania, 261.
See Troubat & Haley's Practice, edition of 1868, vol. 2, p. 392.
See Taylor *vs.* Young, 71 Pennsylvania State Reports, p. 81.

Personal service is not essential; two returns of *nihil* are equal to formal service.

Same, p. 397.

Respectfully submitting the foregoing remarks, we pray your honors to allow the petitioners to be heard in the defence.

DURANT & HORNER,
for Petitioners.

FEB. 19, 1874.

[Exhibit C. B., No. 1.]

SUPREME COURT OF THE UNITED STATES.

Eugene La Sere, Plaintiff in Error,)
vs.) *No.* 92.
A. Rochereau and Mr. and Mrs. C. Bullitt.)

Cuthbert Bullitt, being first duly sworn, says that he is one of the defendants in the above-entitled suit, and that both he and his said wife have been deprived of the benefit of a defence in this case, for the following reasons:

1. Because Miles Taylor, the counsel who was employed to defend this suit, departed this life on the 23d day of September, 1873, without having employed counsel to appear for said defendants in this honorable court, though he was instructed to place the defence in the hands of Hon. Thos. J. Durant, of Washington, which he wholly failed and neglected to do. And this affiant rested in the belief that the interests of his said wife and himself in this suit had been properly looked after by the said Taylor.

2. Because the affiant was not personally served with citation, and was not aware that a writ of error had been taken, nor did the said Miles Taylor advise him at any time that such writ had been actually sued out; this affiant having learned from rumor merely that the plaintiff in error intended to sue out such writ; and it was not positively known by him or his said wife that such writ had been taken when he so instructed the said Taylor to place the defence in the hands of Mr. Durant.

3. Because this affiant and his said wife trusted the defence of this suit entirely to the said Taylor, who died suddenly as aforesaid, without advising them that citation had been served on him in this case; and so affiant believed that the rumored intention of the said Lesere to appeal had never been carried out, and he did not think it necessary to take any steps in the case after the death of the said Taylor.

Affiant further says, that he had no knowledge that this

case had been carried to the Supreme Court of the United States, and there heard, until he saw a report of the decision in the public journals, and that neither he nor his wife have been guilty of any laches in their defence and appearance in this case; that they have a good defence, which they have been deprived of as aforesaid, without their fault.

And affiant further says that the interest of himself and wife are separate and distinct from that of Rochereau & Co., their co-defendants.

Wherefore this defendant, in behalf of himself and his said wife, pray for a rehearing.

CUTHBERT BULLITT.

UNITED STATES OF AMERICA, }
District of } *ss:*

On this 11th day of February, 1874, personally came before the undersigned authority, Cuthbert Bullitt, who, being first duly sworn, says that the statements made by him and subscribed to above are true in fact.

CUTHBERT BULLITT.

Sworn to before me.

[L. S.]

W. A. MERIWETHER,
U. S. Com'r.

[EXHIBIT C. B., NO. 2.]

IN THE SUPREME COURT OF THE UNITED STATES.

October Term, 1873.

EUGENE LESERE }
vs. } *No.* 92.
E. ROCHEREAU AND OTHERS. }

Thomas J. Durant, being first duly sworn, deposes and says that on the fifteenth day of January, 1874, by the receipt of a letter dated at Louisville, Kentucky, on the 13th of the same month, from Cuthbert Bullitt, he was for the first time made aware that Mistress Eliza White, wife of

Cuthbert Bullitt, or her husband had any interest in the above-named cause, and had never heard of the case in this court, except when he heard the opinion read by his honor Justice Swayne, and then the name of Bullitt not appearing, as it does not in the title of the owner on the clerk's docket, there was nothing to attract his attention, as the name of an old friend, that of Mr. Bullitt, might possibly have done. Affiant further deposes that he was never made aware in any way, except as already stated, that such a case existed in this court. He never received notice in any shape that such a writ of error had been issued or returned; that since the day on which the transcript of the record was filed, on the eighteenth day of December, 1871, he has on several occasions seen Miles Taylor in the court-room of this honorable court, and believes that the said Taylor must have seen affiant, as he was near him, but that the said Taylor never said a word to him on the subject of this cause or on any other subject whatever.

Affiant has heard and believes that the said Taylor died last fall, at what time he cannot say, in Saratoga, New York, where he was on a visit, his permanent domicile being in the State of Louisiana.

Affiant further deposes that he is informed and believes, and so states, that after the commencement of these proceedings in the State court of Louisiana, Cuthbert Bullitt and his wife removed from New Orleans to Louisville, Kentucky, where they have ever since resided, and that neither of them was in the city of New Orleans or State of Louisiana when the judgment of the supreme court of that State was given in the cause, or when the writ of error was sued out and served.

THOMAS J. DURANT.

Sworn and subscribed to before me this 19th day of February, A. D. 1874.

JOHN A. JOHNSON,
United States Commissioner for the District of Columbia.

Supreme Court of the United States.

EUGENE LASERE

vs.

E. ROCHEREAU & CO.

No. 92.

ANSWER TO PETITION FOR A REHEARING.

For answer to the petition for a rehearing we say: There was no irregularity in the service of the citation and nothing to be complained of on the part of the plaintiff in error. The suit has been pending in the Supreme Court for several years and there was no appearance either for the plaintiffs in the judgment in the Sixth District Court, or the petitioners for a rehearing. The brief of the plaintiff in

error states the mode of proceeding upon the executory process, in Louisiana, as it is stated in the opinions of the Judges of the District Court and the Supreme Court of Louisiana, which are in the record and very full, and as it is stated in the petition for a rehearing. Before an advertisement for sale under an order for seizure there must be a notice to the mortgagor, or his attorney duly appointed and authorized if he be a resident of the State. This we state as "a necessary stage in the proceedings, the object being to enable the debtor either to avoid the proceedings by opposition, or to pay the money." Brief, p. 3.

The cases cited on the petition for rehearing are to this effect. 16 La. An. 390, 391; McDonough vs. Fost, 1 Rob. 285; 5 La. An. 737. Where the defendant is an *absentee* the court may appoint a curator *ad hoc* to defend him, after notice. Our brief states the fact of the appointment, the service of notice and the duties of curator, and these are not controverted. Brief pp. 11, 12. The executory proceeding is one, *in rem* in the same sense as a decree of foreclosure in chancery is a proceeding *in rem*. The object of the suit is to render the *land* available for the satisfaction of the debt—the notice of the seizure is intended to protect the defendant—the remedy is regarded as harsh and summary, and much strictness is exacted by the courts. There may be an appeal from the order of seizure—an injunction without bond may be used to set up de-

fences specified involving nearly all. Code Pr. 734, 735, 737; 3 Rob. 94; 6 Rob. 192, and cases above cited and cases cited in the petition for rehearing.

The question presented to the court was, and is, whether a person peremptorily ordered to leave the city of New Orleans as an enemy of the United States by a commander and transported to the hostile Confederate territory on a vessel prepared for this purpose during a war, was amenable to the jurisdiction of a local tribunal of the parish of Orleans at all? And whether an appointment of a curator *ad hoc* for him, placed him under the jurisdiction of this court and bound him by its judgments.

We understand that a person acquiring property and contracting debts in a political jurisdiction submits to the codes of procedure of the civil tribunals of that jurisdiction, and that his property may be disposed of according to the laws in force.

But this principle involves the existence of civil intercourse. The fact that they are denominated civil tribunals excludes the ideas of military interruption and entire inability of the party to do a civil act.

In this instance the United States had recognized a state of war—were prosecuting that war with unprecedented vigor; regarded its opponents as rebels, traitors, and as incapable to have property except for the use of the United States. This particular defendant was proscribed and banished to the hostile territory as an enemy. The ban upon him was to

hold no intercourse or communication with and to perform no civil act or duty in the loyal territory from which he had been forcibly removed. His payment of this debt would have been unlawful. He could not make opposition. He could not maintain an injunction or take an appeal by himself or by his own attorney or agent. The appointment of a curator *ad hoc* in such a case was one of those vain things which the law does not exact, and would have been an illegal thing if it had not been vain.

The curator was under a disability to perform his duty—a frank performance would have been a crime.

This was brought to the notice of the courts of Louisiana. It was insisted on as creating an *exemption*—an immunity under the laws of the United States, and under an authority exercised by the United States. So within the language of the judiciary acts of 1789 and 1867 respectively providing for the review of State judgments. The exact case has not arisen. But cases which have an analogy may be cited. McLeod was indicted in New York for murder occurring in the destruction of the steamer Caroline. He answered that the killing occurred in the performance of a duty imposed by the British government, and the responsibility for this act was assumed, and his release demanded by his government. The United States admitted the validity of this defense, but the courts of the State of New York would not do so. The Secretary of State (Mr.

Webster) was obliged to say that relief could only be obtained under the 25th section of the judiciary act. This led to the adoption of the act of August 29, 1842. Ch. 256.

So the case of Holmes vs. Jennison, 14 P. 540. The point there was whether the Governor of a State could as an act of *civility* transfer to a foreign State a criminal charged with a capital offence. In both instances the questions were international and federal, and the subjects claimed that the State authorities were without authority. The case here, is that of a person treated as a public enemy, expelled from New Orleans and transported to a hostile territory under very harsh conditions. He was excommunicated.

Then, a local tribunal allowed by the commander for local purposes, opens civil communication and intercourse, and performs acts of *civility* and good *fellowship* by inviting him to pay his debts in New Orleans and appointing for him a curator, as an absentee—to inform of the litigation and to assist him and then dispose of his claims and interests.

Whether the enemies of the United States, or an enemy of the United States, registered and recognized, and remanded to a hostile territory by command of the General of the department can thus be brought under terms of civil and judicial amity is a question for the courts of the United States.

Was this exercise of jurisdiction allowable? Were such judgments valid?

In the next civil war in which the States or people may be involved—(I hope it will be after this generation shall have passed away), Congress will probably, regulate the subject of intercourse and clearly define what suits may or may not be brought and the modes of procedure.

This regulation will not be limited to prescription and it is to be hoped there will be no law of confiscation. But in the late civil war the barriers to civil and commercial intercourse were not to be surmounted, and the attempt on the part of this local court was an error which the Supreme Court may correct.

J. A. CAMPBELL, and
D. G. CAMPBELL,
Counsel for Plaintiff.